PRINCIPLES OF MERCANTILE LAW

UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

Gilbert Ed. Hoyle,
London. N.5.

Dec. 1922.

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

http://www.archive.org/details/principlesofmerc00chaniala

PRINCIPLES OF MERCANTILE LAW

BY

E. W. CHANCE, O.B.E., LL.B.(Lond.)

OF GRAY'S INN AND THE SOUTH-EASTERN CIRCUIT,
BARRISTER-AT-LAW.

METROPOLITAN COLLEGE
ST. ALBANS
1922

T
C3602-m
1922

PREFACE

The reason for the submission of the present work is that, from practical experience among students preparing for the various professional examinations, I have found the need for a text-book which, while containing all matters necessary for examination purposes, would yet be free from unessential references and legal verbiage. Every effort has been made to keep this work as free as possible from legal phraseology, and also to avoid references to decided cases unless such are of real importance to the student. There are many helpful text-books in existence, but they all suffer from some one or other of those defects, from the student's point of view, that endeavour has been made to guard against herein.

Considerable experience of the requirements both of students and of members of professional bodies induces the belief that this work will supply the wants of both classes, for it covers the whole of the ground of all the examinations in Mercantile Law. It is hoped also that it will prove of great assistance to the ordinary commercial man.

I am greatly indebted to Mr. John C. Dalton, of Gray's Inn, Barrister-at-Law, and to Mr. F. Porter Faussett, B.A., LL.B., of the Inner Temple, Barrister-at-Law, for their great assistance in reading the proofs, and for many practical suggestions.

E. W. C.

1 Essex Court,
Temple, E.C.

CONTENTS

CHAP.		PAGE
	Introduction	1
1	General Law of Contract	9
2	Law of Agency	72
3	Negotiable Instruments—Bills, Notes, and Cheques	92
4	Sale of Goods	124
5	Law of Partnership	146
6	Securities—Mortgages, Bills of Sale, Pawn or Pledge, Lien	167
7	Shipping	184
8	Insurance	193
9	Carriage and Affreightment	208
10	Suretyship and Guarantee	225
11	Stock Exchange	234
12	Patents, Trade Marks, and Copyright	241
13	Limited Liability Companies	255
14	Law of Bankruptcy	291
15	Arbitration and Awards	326
	Appendices	335
	Examination Questions	485

APPENDICES

APPENDIX	ACT OF PARLIAMENT	PAGE
A.	Bills of Exchange Act, 1882	335
B.	Bills of Exchange (Crossed Cheques) Act, 1906	362
C.	Bills of Exchange (Time of Noting) Act, 1917	363
D.	Factors Act, 1889	364
E.	Sale of Goods Act, 1893	368
F.	Partnership Act, 1890	385
G.	Limited Partnerships Act, 1907	395
H.	Bankruptcy Act, 1914	400
I.	Deeds of Arrangement Act, 1914	469
J.	Arbitration Act, 1889	479

TABLE OF CASES CITED

A

PAGE

Abbott *v.* Wolsey (1895) 132
Acraman *v.* Morrice (1849) . . . 128
Adams *v.* Lindsell (1818) 28
Addison *v.* Gandasequi (1812) . . 81
A Debtor, *In re* (1898) 292
Ajum Goolam Hossen & Co. *v.* Union Marine Insurance Co. (1901) 219
Allen *v.* Flood (1898) 4, 53
Allen & Co., Ltd. *v.* Whiteman (1920) 18, 29
Allnutt *v.* Ashenden (1843) . . . 228
Altree *v.* Altree (1898) 176
Andrews *v.* Mockford (1896) . . . 50
Arkwright *v.* Newbold (1881) . . 51
Armstrong *v.* Jackson (1917) . . . 49
Ashbury Railway Carriage Co. *v.* Riche (1875) 38
Ashby *v.* White (1703) 3

B

Backhouse *v.* Charlton (1878) . . 120
Bailey *v.* Thurston (1903) . . . 309
Baird's Case (1870) 153
Bamfield *v.* Goole & Sheffield Transport Co. (1910) 215
Banbury *v.* Bank of Montreal (1918) 89
Bank of England *v.* Vagliano (1891) 99
Banque Belge pour L'Étranger *v.* Hambrouck (1921) 118
Barry *v.* Croskey (1861) 50
Bath *v.* Standard Land Co., Ltd. (1911) 77
Baylis *v.* Dinely (1815) 32
Bechuanaland Exploration Co. *v.* London Trading Bank (1898) . . 96
Bell *v.* Balls (1897) 87
Benjamin *v.* Barnett (1903) . . . 235
Bentley *v.* Craven (1853) 157
Bentsen *v.* Taylor (1893) 134
Betts, *In re* (1901) 297
Birkmyr *v.* Darnell (1704) . . 20, 226
Blakely *v.* Muller (1903) 70
Bloomenthal *v.* Ford (1897) . . . 268
Bolton *v.* Madden (1874) 22
Bolton Partners *v.* Lambert (1888) 29
Boston Deep Sea, etc. Co. *v.* Ansell (1888) 78
Bowler and Blake *v.* Lovegrove (1921) 42
Boydell *v.* Drummond (1809) . . 17,18
Bromley *v.* Smith (1909) 33
Burden *v.* Burden (1813) . . . 159
Button, *In re* (1907) 310
Byrne *v.* Van Tienhoven (1880) . . . 27

C

PAGE

Calcutta Co. *v.* De Mattos (1863) . 129
Carlill *v.* Carbolic Smoke Ball Co. (1893) 22, 26, 28
Castellain *v.* Preston (1883) . . . 194
Caswell *v.* Cheshire Lines Committee (1907) 210
Cave *v.* Hastings (1881) 18
Chamberlain *v.* Young (1893) . . 98
Chasemore *v.* Richards (1859) . . 4
Clarke *v.* Army and Navy Co-operative Society (1903) 135
Clayton's Case (1816) 62, 63
Clements *v.* London & North-Western Railway Co. (1894) . . . 33
Clough *v.* Samuel (1905) 295
Cochrane *v.* Entwistle (1890) . . . 176
Cochrane *v.* Rymill (1881) . . . 87
Coggs *v.* Bernard (1704) . . 77, 178, 209
Collins *v.* Collins (1858) 326
Condy *v.* Taylor (1887) 247
Cornelius *v.* Phillips (1918) . . . 45
Corpe *v.* Overton (1833) 34
Cort *v.* Ambergate Railway Co. (1851) 65
Counsell *v.* London & Westminster Loan Co. (1887) 174
Couturier *v.* Hastie (1856) . . 47, 129
Cowern *v.* Nield (1912) 32
Coxhead *v.* Mullis (1868) 32
Crane *v.* London Docks Co. (1864) . 139
Crawcour *v.* Salter (1881) 310
Crowley *v.* O'Sullivan (1900) . . . 147
Crocker *v.* Crocker (1920) . . . 23
Crook *v.* Morley (1891) 295
Cruttwell *v.* Lye (1810) 162
Currie *v.* Misa (1875) 21
Curtice *v.* London, City & Midland Bank (1908) 120
Cutter *v.* Powell (1795) . . . 64, 66

D

Daniel *v.* Rogers (1918) 45
Day *v.* McLea (1889) 23, 61
Dearle *v.* Hall (1823) 57
Debenham *v.* Mellon (1881) . . . 90
De Bussche *v.* Alt (1878) 78
De Mattos *v.* Benjamin (1894) . . 44
Derry *v.* Peek (1889) . . . 49, 50 51
Dewar *v.* Mintoft (1912) 18
Dey *v.* Mayo (1920) 44
Diamond Alkali Corporation *v.* Bourgeois (1921) 222
Dickinson *v.* Dodds (1876 . . . 27

	PAGE
Dixon *v.* Baldwen (1804)	141
Dixon *v.* Kennaway (1900)	267
Dodsley *v.* Kinnersley (1761)	251
Donnellan *v.* Read (1832)	20
Drew *v.* Drew (1898)	330
Drew *v.* Nunn (1879)	84
Driver *v.* Broad (1893)	20
Drummond *v.* Van Ingen (1887)	136, 137
Dunn *v.* Bucknall Bros. (1902)	219
Dyke *v.* South Eastern and Chatham Railway (1901)	210

E

Earle *v.* Cow (1920)	152
East India Railway Co. *v.* Kalidas Mukerjee (1901)	208
Edelstein *v.* Schuler & Co. (1902)	96
Eley *v.* Positive Government Security Life Assurance Co. (1876)	53
Ellesmere Brewery Co. *v.* Cooper (1896)	230, 232
Elliman *v.* Carrington (1901)	43
Elmore *v.* Stone (1809)	132
Elphick *v.* Barnes (1880)	129

F

Finney, *In re* (1874)	295
Fisher Reeves & Co. *v.* Armour & Co. (1920)	66
Foakes *v.* Beer (1884)	22
Ford *v.* Radford (1920)	24, 40
Fort, *In re* (1897)	150
Frost *v.* Aylesbury Dairy Co. (1905)	136
Furley *v.* Bates (1865)	128

G

Gadd *v.* Thompson (1911)	33
Garner *v.* Murray (1904)	161
Garrard *v.* Lewis (1883)	111
Garwood's Trusts (1903)	159
Geddling *v.* Marsh (1920)	136
General Accident Assurance Corporation *v.* Noel (1902)	67
General Billposting Co. *v.* Atkinson (1908)	42
Giblan *v.* National Amalgamated Labourers' Union (1903)	53
Great Western Railway Co. *v.* Bunch (1888)	215
Green *v.* Thompson (1899)	33
Greenshields Cowie Co. *v.* Stephens & Sons (1908)	188
Grover and Grover *v.* Matthews (1910)	199
Guild & Co. *v.* Conrad (1894)	227

H

Hadley *v.* Baxendale (1854)	67
Hallett's Estate, *re* (1880)	63
Halsey *v.* Lowenfeld (1916)	71
Hamilton, Fraser & Co. *v.* Pandorf & Co. (1887)	218
Hamlyn *v.* Houston & Co. (1903)	154
Hamlyn & Co. *v.* Talisker Distillery (1894)	55
Hanan *v.* Ehrlich (1911)	21
Hancock, *In re* (1894)	297
Harburg Indiarubber Comb Co. *v.* Marten (1902)	227
Hargreave *v.* Spink (1892)	139
Harrington *v.* Victoria Graving Dock Co. (1878)	77
Harvey *v.* Facey (1893)	26
Hastings *v.* Pearson (1892)	180
Hayman, *ex parte* (1878)	324
Henthorn *v.* Fraser (1892)	29
Hermann *v.* Charlesworth (1905)	45
Hirachand Punamchand *v.* Temple (1911)	61
Hochster *v.* De la Tour (1853)	65
Hodkinson *v.* London & North Western Railway (1885)	216
Holme *v.* Brunskill (1878)	231
Holmes *v.* Blogg (1818)	34
Holthausen, *ex parte* (1874)	316
Horne *v.* Midland Railway Co. (1873)	67
Horsfall *v.* Thomas (1862)	51
Household Fire Insurance Co. *v.* Grant (1879)	29
Howes *v.* Bishop (1909)	52
Hoyle *v.* Hoyle, *re* Hoyle (1893)	17
Hugh Stevenson & Sons *v.* Aktien-Gesellschaft für Cartonnagen Industrie (1918)	37, 150

I

Imperial Loan Co. *v.* Stone (1892)	36

J

Janson *v.* Driefontein Consolidated Mines Ltd. (1902)	41
Johnson *v.* Hudson (1809)	43
Jones *v.* Gordon (1877)	110
Jones *v.* Marshall (1889)	179
Jordan *v.* Norton (1838)	27

K

Kearley *v.* Thomson (1890)	45
Kearon *v.* Pearson (1861)	69
Keighley Maxted & Co. *v.* Durant (1901)	75
Kelner *v.* Baxter (1867)	82, 260
Kendall *v.* Hamilton (1879)	155
Kendall *v.* Marshall, Stevens & Co. (1883)	141
Kirkham *v.* Attenborough (1897)	128
Kitchin *v.* Hawkins (1867)	47

L

Lacey *v.* Hill (1874)	164
Lake, *In re* (1901)	315
Lagunas Nitrate Co. *v.* Lagunas Syndicate (1899)	49
Lampleigh *v.* Brathwait (1616)	24
Langridge *v.* Levy (1838)	50
Law *v.* Law (1905)	157
Le Blanche *v.* London & North Western Railway Co. (1866)	213
Lee *v.* Griffin (1861)	131
Leslie *v.* Sheill (1914)	31
Leslie *v.* Young (1894)	251

PAGE

Lockhart *v.* Hardy (1846) . . . 170
London & County Banking Co. *v.* Groome (1882) 117
London & Northern Bank, *In re, ex parte* Jones (1900) 29
London Freehold & Leasehold Property Co. *v.* Suffield (1897) . . 11
London Joint Stock Bank *v.* Simmons (1892) 96
Lord Churchill, *In re* (1888) . . . 230
Lucas *v.* Dixon (1889) 17
Lucena *v.* Crawfurd (1802) . . . 194
Lumley *v.* Gye (1853) 53

M

Macdonald *v.* Whitfield (1883) . . 109
Marshall *v.* Glanvill (1917) . . . 84
Martyn *v.* Gray (1863) 155
Mayor of Salford *v.* Lever (1891) . . 78
Marzetti *v.* Williams (1830) . . . 88
Measures Brothers Ltd. *v.* Measures (1910) 42
Metropolitan Water Board *v.* Dick Kerr & Co. (1918) 69
Miller, Gibb & Co. *v.* Smith and Tyner (1917) 81
Mirams, *In re* (1891) 41
Mollwo March & Co. *v.* Court of Wards (1872) 156
Moran Galloway & Co. *v.* Uzielli (1905) 200
Morel Bros. *v.* Westmorland (1904) . 90
Morley *v.* Attenborough (1873) . . 180
Morris *v.* Baron & Co. (1918). . . 19
Myers *v.* Elliott (1886) 176

N

Nash *v.* Inman (1908). 34
National Provincial Bank of England *v.* Glenusk (1913) 229
Newlands *v.* Employers' Accident Association (1885) 79
Niblett Ltd. *v.* Confectioners' Materials Co. Ltd. (1920) 135
Nichol *v.* Godts (1854) 136
Nickoll and Knight *v.* Ashton Edridge & Co. (1901) 70
Nordenfelt *v.* Maxim Nordenfelt Gun & Ammunition Co. (1894) . . . 41
North-Western Bank *v.* Poynter (1895) 178
Nottingham Permanent Building Society *v.* Thurstan (1903). . 31, 171

O

O'Connor and Ould *v.* Ralston (1920) 147
Ogden *v.* Benas (1874) 118
Oglesby *v.* Yglesias (1858) . . . 219
Oliver *v.* Hunting (1890) 18

P

Page *v.* Morgan (1885) 132
Parker *v.* South-Eastern Railway (1877) 28
Paterson *v.* Gandasequi (1812) . 81, 82
Paquin, Ltd. *v.* Beauclerk (1906) . 35

PAGE

Payne and Routh *v.* Lillico & Sons (1920) 126
Pearce *v.* Gardner (1897) 18
Peek *v.* Gurney (1873) 50, 52
Pennington *v.* Crossley & Sons (1897) 61
Percival *v.* Wright (1902). . . . 276
Perry *v.* Barnett (1885) 80
Pickering *v.* Ilfracombe Rail Co. (1868) 40
Plimpton *v.* Malcolmson (1876) . . 242
Plummer, *In re* (1900) 314
Polhill *v.* Walter (1832) 83
Porter *v.* Freudenberg (1915) . . 37
Powell's Trade Mark, *In re* (1894) . 245
Premier Industrial Bank, Ltd. *v.* Carlton Manufacturing Co. Ltd. (1909) 104
Prickett *v.* Badger (1857). . . . 79
Priest *v.* Last (1903) 136
Printing & Numerical Co. *v.* Sampson (1875) 41

Q

Quenerduaine *v.* Cole (1883) . . . 26

R

Raffles *v.* Wichelhaus (1864) . . . 47
Randall *v.* Newson (1877) . . . 136
Reed *v.* Friendly Society of Stonemasons (1902) 53
Reddaway *v.* Banham (1896) . . 247
Redgrave *v.* Hurd (1881) 51
Roberts, *In re* (1900) 309
Roberts *v.* Gray (1913) 33
Robins *v.* Gray (1895) 182
Robinson *v.* Davison (1871) . . . 70
Robinson *v.* Mollett (1875) . . . 77
Robson *v.* Premier Oil & Pipe Line Co. (1915) 37, 290
Rodriguez *v.* Speyer Bros. (1919) . 150
Rouse *v.* Bradford Banking Co. (1894) 157
Royal British Bank *v.* Turquand (1856) 259
Ruben *v.* Great Fingall Consolidated (1906) 268
Rudge *v.* Rickens (1873) 170

S

Sailing Ship Blairmore Co. *v.* Macredie (1898) 204
St. Lawrence, The (1880) . . . 190
Schaverien *v.* Morris (1921) . . . 116
Schmaltz *v.* Avery (1851). . . . 218
Scholfield *v.* Lord Londesborough (1896) 111
Scothern *v.* South Staffordshire Railway Co. (1853) 214
Scott *v.* Brown (1892). 40
Scott *v.* Sebright (1887) 52
Scott *v.* Stamford (1867) 251
Seaton *v.* Burnand (1900) . . . 229
Seligman *v.* Eagle Insurance Co. (1917) 71
Seymour *v.* Bridge (1885) . . . 80
Shaw *v.* Great Western Railway (1894) 210

PAGE

Sheffield *v.* London Joint Stock Bank (1888) 96
Shepherd *v.* Kottgen (1878) . . . 189
Shipton Anderson & Co. *v.* Harrison Bros & Co.'s Arbitration, *Re* (1915) 70
Simmons *v.* Swift (1826) 128
Simpson *v.* Lamb (1855) 79
Sims *v.* Bond (1833) 81
Singer Manufacturing Co. *v.* Clark (1879) 180
Smith *v.* Chadwick (1882) . . . 51
Smith *v.* Hughes (1871) 46
Smith *v.* Gold Coast & Ashanti Explorers Ltd. (1903) 21
Smith & Service, *In re* (1890) . . 330
Smout *v.* Ilbery (1842) 84
Soltykoff, *In re* (1891) . . . 34, 103
South African Breweries Ltd. *v.* King (1900) 56
Southey *v.* Sherwood (1817) . . . 248
Starkey *v.* Bank of England (1903) . 83
Steel *v.* Dixon (1881) 230
Sutters *v.* Briggs (1921) 44
Sutton *v.* Grey (1894) 226

T

Talbot *v.* Von Boris (1911) . . . 110
Tamplin Steamship Co. *v.* Anglo-Mexican, etc., Co. (1916) . . . 70
Tarling *v.* Baxter (1827) 127
Tatam *v.* Haslar (1889) 110
Taylor, *ex parte* (1887) 314
Taylor *v.* Bowers (1876) 45
Taylor *v.* Caldwell (1862) 70
Taylor *v.* Smith (1893) 132
Thacker *v.* Hardy (1879) 44

PAGE

Thomson *v.* Davenport (1829) . 81, 82
Thompson *v.* Regem (1920) . . . 29
Thornsett and Fehr *v.* Youills, Ltd. (1920) 69
Tiedemann and Ledermann Frères, *Re* (1899) 75
Trego *v.* Hunt (1896) 162
Turton *v.* Turton (1889) 148
Twycross *v.* Grant (1877) . . . 260, 261

U

United Kingdom Mutual Association *v.* Houston (1896) 331

V

Valentini *v.* Canali (1890) . . . 34
Vawdrey *v.* Simpson (1896) . . . 333
Vinden *v.* Hughes (1905) 99

W

Waller *v.* Lacey (1840) 63
Walter *v.* Everard (1891) . . . 33, 34
Ward & Co. *v.* Wallis (1900) . . . 47
Waring, *ex parte* (1815) . . . 317, 325
Warne *v.* Seebohm (1888) . . . 251
Watney *v.* Wells (1862) 151
Welch *v.* London & North Western Railway Co. (1885) 215
Whitehead *v.* Anderson (1842) . . 141
Wilson *v.* Brett (1843) 77
Wood *v.* Priestner (1867) 228

Y

Yonge *v.* Toynbee (1910) . . . 83, 84
Young *v.* Grote (1827) 118

TABLE OF STATUTES CITED

PAGE

Anchors and Chain Cables Act, 1899 135
Arbitration Act, 1889 327
Assurance Companies Act, 1909 . . . . . 163, 195, 196
Bank of England Act, 1833 . . . . . 60, 122
Banking Companies (Shares) Act, 1867. *See* Leeman's Act.
Bankruptcy Act, 1883 323
Bankruptcy Act, 1914 . . . . . 35, 39, 231, 291
Betting and Loans (Infants) Act, 1892 32
Bills of Exchange Act, 1882 . . . . . 43, 64, 92, 123
Bills of Exchange (Crossed Cheques) Act, 1906 . . . . . 92, 119
Bills of Exchange (Time of Noting) Act, 1917 . . . . . 92, 113
Bills of Lading Act, 1855 . . . . . 221, 223
Bills of Sale Act, 1878 . . . . . 172, 173, 186, 220, 275
Bills of Sale (1878) Amendment Act, 1882 . . . . . 167, 172, 174, 186, 220, 275
Bills of Sale Act, 1890 172
Bills of Sale Act, 1891 172
British Nationality and Status of Aliens Act, 1914 36
Building Societies Act, 1894 327
Carriage and Deposit of Dangerous Goods Act, 1866 (*Nitro-Glycerine Act*) . . . 215
Carriers Act, 1830 209
Civil Procedure Act, 1833 . . . . . 63, 68
Coinage Act, 1870 60
Companies (Consolidation) Act, 1908 . . . 2, 38, 49, 103, 146, 163, 166, 255, 327
Companies Act, 1913 . . . . . 255, 282
Companies (Particulars as to Directors) Act, 1917 . . . . . 146, 166, 255, 266
Companies (Foreign Interests) Act, 1917 289
Conveyancing and Law of Property Act, 1881 . . . . . 169, 170, 172
Copyright Act, 1911 248
Currency and Bank Notes Act, 1914 60
Debtors Act, 1869 295
Deeds of Arrangement Act, 1914 . . . . . 291, 304, 325
Diplomatic Privileges Act, 1708 37
Directors' Liability Act, 1890 49
Factors Act, 1889 . . . . . 85, 124, 137, 178, 180
Factories and Workshops Act, 1891 327
Factories and Workshops Act, 1901 327
Fertilisers and Feeding Stuffs Act, 1906 135
Finance Act, 1899 122
Finance Act, 1918 122
Fires Prevention (Metropolis) Act, 1774 198
Forged Transfers Act, 1891 268
Forged Transfers Act, 1892 268
Friendly Societies Act, 1896 . . . . . 319, 327
Gaming Act, 1835 44
Gaming Act, 1845 . . . . . 43, 44
Gas Works Clauses Act, 1871 327
Infants' Relief Act, 1874 . . . . . 31, 33
Innkeepers' Act, 1878 182
Judicature Act. *See* Supreme Court of Judicature Act.
Judgments Act, 1838 63
Lands Clauses Act, 1845 327
Life Assurance Act, 1774 196
Limitation Act, 1623 . . . . . 63, 68, 89, 115, 156, 232
Limited Partnership Act, 1907 . . . . . 146, 165, 255, 321
Leeman's Act (Banking Companies' Shares Act, 1867) 14, 44, 80, 234

PAGE

London Building Act, 1894 327
Lord Tenterden's Act (Statute of Frauds Amendment Act, 1828) 16, 51, 68, 130, 233
Markets and Fairs Clauses Act, 1847 327
Marine Insurance Act, 1906 . . . . . 199, 220
Marine Insurance (Gambling Policies) Act, 1909 200
Maritime Conventions Act, 1911 189
Married Women's Property Act, 1882 . . . . . 35, 195
Married Women's Property Act, 1884 35
Married Women's Property Act, 1893 35
Medical Act, 1886 39
Mercantile Law Amendment Act, 1856 . . . . . 226, 229
Merchandise Marks Act, 1887 . . . . . 134, 246, 247
Merchandise Marks Act, 1891 247
Merchant Shipping Act, 1894 . . . . . 182, 184, 212, 216, 222
Merchant Shipping Act, 1897 184
Merchant Shipping (Liability of Shipowners and others) Act, 1900 . . . 184
Merchant Shipping Act, 1906 . . . . . 184, 191, 200, 201
Merchant Shipping Act, 1907 184
Metropolis Management Act, 1855 327
Metropolis Management Act, 1878 327
Metropolitan Fire Brigade Act, 1865 198
Military Service Act, 1916 84
Moneylenders Act, 1900 . . . . . 45, 64, 179
National Insurance Act, 1911 287
National Insurance Act, 1921 287
Naturalisation Act, 1870 36
Nitro-Glycerine Act 215
Partnership Act, 1890 . . . . . 2, 146, 149, 229, 233, 318
Patents and Designs Act, 1907 . . . . . 241, 248, 253
Patents and Designs Act, 1919 . . . . . 241, 243
Pawnbrokers Act, 1872 179
Policies of Assurance Act, 1867 197
Prevention of Corruption Act, 1906 78
Public Health Act, 1875 38
Railway and Canal Traffic Act, 1854 . . . . . 210, 214
Railways Act, 1921 . . . . . 209, 211
Railways Clauses Act, 1845 . . . . . 216, 327
Railway Companies (Accounts and Returns) Act, 1911 211
Real Property Limitation Act, 1874. 68
Registration of Business Names Act, 1916 . . . . . 45, 148, 154, 267
Regulation of Railways Act, 1868 211
Sale of Goods Act, 1893 . . . 2, 15, 16, 21, 55, 67, 86, 87, 124, 130, 131, 134, 135
Savings Bank Act, 1863 319
Stamp Act, 1891 . . . . . 98, 122
Stannaries Act, 1869 146
Stannaries Act, 1887 146
Statute of Frauds, 1677 . . . . . 14, 16, 56, 73, 74, 87, 130, 225, 227, 233
Statute of Frauds Amendment Act, 1828. *See* Lord Tenterden's Act.
Statute of Limitations, 1623 . . . . . 68, 114, 116
Statute of Monopolies, 1623 241
Sunday Observance Act, 1677 43
Supreme Court of Judicature Act, 1873 . . . . . 2, 55, 57
Supreme Court of Judicature Act, 1875 2
Trade Marks Act, 1905 245
Trade Marks Act, 1919 245
Trades Disputes Act, 1906 53
Truck Act, 1831 . . . . . 14, 43
Truck Act, 1887 . . . . . 14, 43
Unemployment Insurance Act, 1921 287
Workmen's Compensation Act, 1906 . . . . . 287, 327
Workmen's Compensation (War Additions) Act, 1919 287

PRINCIPLES OF MERCANTILE LAW

INTRODUCTION

The history of the law is an interesting subject worthy of detailed study, but outside the scope of this work, which is intended to provide a statement of the principles of Mercantile Law. It may be, however, of some value to the student to have a general idea of the growth of our volume of law, and of the present procedure in connection with legal proceedings.

In early times the law that existed was the result of custom that had been handed down orally from generation to generation, probably from the times of the early Britons, being added to gradually by the "law-givers" of each succeeding period. Usages of other races, for instance the Romans, were incorporated, and, after the Norman Conquest, the body of law common to the whole country, as distinct from local customs, was administered in the King's Courts and was designated the Common Law.

By degrees this Common Law became a mass of ill-digested and hide-bound tradition which could on no account be modified or made flexible to suit the more varying conditions of later times, and this entailed very great hardship on the trading community. Consequently, among traders there grew up various customs and usages which tended to simplify their intercourse with one another. Practices of foreign merchants were followed, and large numbers of rules from foreign codes and bodies of law were adopted by the merchants, in particular those rules which had reference to maritime matters, this country then, as now, carrying on considerable foreign trade and shipping. The English courts took no cognizance of this *lex mercatoria*, or law merchant, until comparatively recent times ; but gradually it was recognized by the courts and, towards the middle of the eighteenth century, it became firmly established as part of the Common Law.

A direct outcome of the harshness and inflexibility of the earlier body of Common Law was the birth of what is known as Equity Jurisprudence, which originated in the inability of

the Common Law Courts to give a remedy where none existed at Common Law, or where that law gave insufficient relief. It became customary to petition the King, who directed the Chancellor to review the petitions and bring before him such matters as he thought proper. Edward III ordered the Chancellor to deal with these petitions himself; and in the reign of Richard II Parliamentary authority was given to the Chancellor's jurisdiction. In all such cases, equity was supposed to deal in matters of natural justice, as distinct from a purely legal right. As might have been expected, however, these two opposing bodies of jurisprudence frequently clashed, and there have been in the history of the law several celebrated deadlocks between the Courts of Common Law and those of equity, i.e., the Court of Chancery, in which neither the Lord Chief Justice on the one hand, nor the Lord Chancellor on the other, would give way. Finally, the rules of law and equity were fused by the Judicature Acts, 1873 and 1875, and it was therein laid down that, where the rules of law and equity clashed, those of equity should prevail.

In addition to this gradual growth of a system of jurisprudence, much has been added and much been altered by Acts of the Legislature—the King, the House of Lords and the House of Commons in Parliament assembled. These Acts are known as statutes, and the body of law thus created is referred to collectively as Statute Law. Statute Law is superior to, and overrides, all rules of both Common Law and equity. Of late years, attempts have been made to collect into one statute or series of statutes all the rules relating to one particular branch of the law; this is known as "consolidation" and "codification," e.g., the Companies (Consolidation) Act, 1908, the Partnership Act, 1890, the Sale of Goods Act, 1893.

Prior to the Judicature Acts, there were in existence several distinct courts, (1) The Courts of Common Law, comprising the Queen's Bench, the Court of Common Pleas, and the Court of Exchequer, and (2) the Court of Chancery. The Judicature Acts created the Supreme Court of Judicature, which consists of the High Court of Justice and the Court of Appeal. The High Court is now divided into Divisions—viz., Chancery Division, King's Bench Division, and Probate, Divorce and Admiralty Division. Matters formerly the subject of cognizance in the separate courts are still commenced and carried on in the analogous divisions of the High Court, but if an action is brought in the wrong division it can be either transferred or retained there, without detriment to the parties concerned.

The Supreme Court of Judicature, together with the House of Lords, the Judicial Committee of the Privy Council, the Palatinate Courts, and the Railway and Canal Commission, are

classified as Superior Courts of Record. Inferior Courts of Record, so called because their proceedings are subject to the supervision of some superior court, include County Courts, the Mayor's Court of London, and Quarter Sessions.

Courts of Record are so called because a record is kept of the proceedings before them, and in fact was so kept in ancient days, and such records are conclusive evidence of what is contained therein.

The causes of action arising out of *contract* will be considered in the succeeding chapters, but a brief consideration of *tort* may not be out of place here. A tort has been defined as some wrongful act, consisting in the withholding or violating of some legal right, giving rise to an action for damages. It has two essentials: (1) A wrongful act committed by one party; (2) Damage to another party. Usually a tort arises otherwise than out of a contract, but it may be dependent on contract: so that actions may be divided into three classes—

(*a*) *A tort founded on a contract*—if the contract imposes a legal duty the neglect of that duty is a tort founded on a contract, and the injured party may commence an action for breach of the contract or for tort:

(*b*) *A tort unconnected with any agreement*, e.g., a person being run down on the highway by the negligence of a motorist.

(*c*) *A tort arising out of a contract*, e.g., if a person other than a party to the contract maliciously induces one of the parties not to perform what he is legally required to perform under the agreement.

Actions may be founded on the infringement of a person's legal rights, that is, if a contract has been broken, or a tortious act committed, the other party to the contract or the person who has been injured by the tortious act has a right of action in respect thereof. He will be able to maintain an action even if he has suffered no substantial damage, if he has, in fact, suffered what in the eyes of the law is regarded as a legal injury—the legal maxim being that *Injuria sine damno* (an injury without actual harm) will entitle a person to maintain an action. This applies only where the injury is a legal injury and not merely, for instance, a moral wrong; and there are certain acts which are opposed to the law and yet which do not give a right of action without proof of actual damage. The above maxim is well exemplified in the leading case of *Ashby* v. *White* (1703), where a returning officer maliciously refused to receive the vote of the plaintiff at a parliamentary election. The candidates for whom plaintiff wished to vote were elected, so that actually he suffered no damage; but it was held that he had a legal right to vote and that that legal right had been infringed, so that he had a right of

action. As opposed to this, there are cases where a person has suffered damage but can obtain no redress because there has been no infringement of what the law regards as a legal right, the maxim here being that *Damnum sine injuria* (harm without legal injury) will not entitle the person to maintain an action. Thus, in *Chasemore* v. *Richards* (1859), it was held that a person may dig down in his land and so deprive his neighbour of water which would otherwise be available on his land. This would do great harm to the neighbour, but it is not the infringement of a legal right, and is therefore not sufficient to maintain an action. In this connection may be noted also the leading case of *Allen* v. *Flood* (1898). A shipbuilding firm employed many workmen, including the plaintiffs, and the plaintiffs had incurred the displeasure of a trade union. One of the officials of the union went to the firm and threatened that if the plaintiffs were not dismissed, the other workmen would be called out, and the firm yielded to the threat and terminated in a lawful manner the employment of the plaintiffs. On the plaintiffs suing the official of the trade union for damages, it was held that there was no cause of action as the harm suffered was *damnum sine injuria*. As a rule *damnum* and *injuria* combine to support an action, as otherwise the plaintiff would not receive substantial damages, and where they do combine there is always a good cause of action. The rule at Common Law is that if a person who has suffered injury should die before he enforces his claim the cause of action comes to an end on his death, the legal maxim being—*Actio personalis moritur cum persona* (a personal action dies with the person), but there are many exceptions to this rule ; and, similarly, in some cases the death of the person who caused the injury deprives the injured party of his remedy. Ordinarily, the maxim applies to actions arising out of torts and not out of contracts, that is, in legal phraseology, to actions *ex delicto* and not *ex contractu* ; but rights arising out of contracts will expire where the contract is personal, e.g., where an artist contracts to paint a picture and dies before completing the work. So that actually the distinction is not between actions out of torts and action arising out of contracts, but really between rights affecting persons and those affecting property.

Actions on commercial matters would, as a rule, be taken in the King's Bench Division of the High Court, in which there is now a special court known as the Commercial Court for the trial of causes " arising out of the ordinary transactions of merchants and traders, amongst others those relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking, and mercantile agency and mercantile usages." Matters connected with shipping

would, as a rule, be commenced in the Admiralty Division, and those relating to partnership, patents, trade-marks, copyright, and the winding up of joint-stock companies in the Chancery Division.

An action in the King's Bench Division is commenced by a *Writ of Summons*, which commands the defendant to enter an appearance usually within eight days of service. On the writ are endorsed particulars of the plaintiff's claim; and, if the defendant should decide to contest the claim, he must enter an appearance within the stated time. If he does not appear, judgment may be entered against him, which will be final if the claim is for a liquidated amount—that is an ascertained sum—but, if for an unliquidated amount, what is termed an interlocutory judgment is signed and a *writ of inquiry* is issued to assess the amount of damages. If the defendant enters an appearance, the plaintiff must take out a *Summons for Directions* within fourteen days of appearance, except in certain specified cases, and in these cases he may do so if he wishes. The Master then directs whether there shall be pleadings, orders further particulars, discovery, where and how the action shall be tried, and other matters. Pleadings are documents recording the precise facts on which parties intend to rely at the trial. They consist, principally, of :—

(1) *Statement of Claim* made by plaintiff within 21 days after order.

(2) *Statement of Defence* made by defendant, as a rule within 10 days.

(3) *Statement of Reply* of the plaintiff, when specially ordered, within 10 days after delivery of defence.

(4) *Rejoinder* by the defendant within 4 days.

By what is known as procedure under Order 3, Rule 6, writs may be specially endorsed and the matter quickly disposed of where the action is for a liquidated sum under a contract, statute, or trust, and in certain other matters not within the purview of commercial law. The advantages of this procedure are that the special endorsement is equivalent to a statement of claim and no further statement of claim is permitted, and, even if defendant appears, an order may be made under Order XIV for plaintiff to have judgment, unless good cause be shown. There are other variations of procedure which are however somewhat outside the scope of this work and as, naturally, the commercial man would never contemplate taking legal proceedings without professional assistance, an intimate acquaintance with the details of procedure is not necessary to a knowledge of mercantile law.

As soon as issue is joined, that is, when the pleadings have

been closed, the plaintiff gives notice of trial within six weeks. If he does not, the defendant may do so or may apply to have the action dismissed. As a rule the notice is a ten days' notice, and the cause is entered for trial. When it comes to be heard, the whole of the matters in dispute are considered and judgment is given. If the plaintiff establishes his claim, he has judgment in his favour with costs: if he fails to do so, judgment is given against him and, as a rule, he will be required to pay the defendant's costs. Appeals may be brought to the Court of Appeal and thence to the House of Lords.

Judgment may take the form of an award of damages in cash; or of specific performance, that is, the actual carrying out of the contract in the agreed terms, although specific performance will not, as a rule, be granted if (1) consideration is lacking, (2) it would be inequitable, (3) supervision of the court is impossible, (4) it is unenforceable against the person asking for it; or the court may issue an injunction to prohibit a party from doing certain things.

Judgment may be enforced in several ways, the most common writs for this purpose being:—

(1) *Fieri facias*, for the purpose of seizing the debtor's money and selling his goods—usually termed *fi. fa.*

(2) *Elegit*, for the purpose of seizing his lands.

(3) *Garnishee order*, an order obtained against a third party who owes money to the judgment debtor, commanding him to pay it to the judgment creditor instead.

(4) *Charging order*, for the purpose of seizing stocks and shares or a partner's interest. Six months must elapse from the date of order before the benefit can be taken. It is customary to obtain also a *Stop order* to prevent the income being paid away meantime.

(5) *Equitable execution*, obtained in cases where there is no available remedy by execution at law. If money be due to the debtor from any source, a receiver may be appointed to receive the money and satisfy the creditor therewith.

(6) If the debtor does not pay, and it can be shown that he has had the means of doing so since the date of the judgment, he may be brought before the court on a *judgment summons* and be imprisoned for a period up to six weeks.

District Registries have been established in many parts of the country where actions may be commenced and continued as far as "entry for trial" and where, after trial, judgment may be entered and execution issued. Obviously this tends to facilitate proceedings and to lessen expense.

County Courts have been constituted for local jurisdiction. This jurisdiction is up to £100 in contract and tort; up to £500 in Chancery cases and, as a rule, in connection with the winding up of joint-stock companies whose paid-up capital does not exceed £10,000, and in Bankruptcy proceedings. The Metropolitan County Courts have no jurisdiction under the two latter headings. County Courts have exclusive jurisdiction in matters under the Employers' Liability Act and the Workmen's Compensation Acts. County Court Judges are appointed, each covering a certain district, and within his district the Judge goes on circuit periodically. In these courts the proceedings are usually commenced by what is called a *Plaint*, and there are no pleadings, otherwise the procedure is similar to that outlined above. In County Courts, too, there is an official termed a Registrar: undefended and admitted cases and disputed minor causes may, with the consent of the parties, be heard and determined by him. He also takes Bankruptcy examinations. Appeals may be made from the decision of a County Court Judge to a Divisional Court of the King's Bench Division, but not beyond that without special leave.

There is another method of settling disputes which is growing greatly in favour in the commercial world, that is, ARBITRATION, the procedure of which is now regulated by the Arbitration Act, 1889. This important subject will be considered in detail hereinafter (*a*).

The jurisdiction of the High Court extends only to England and Wales and to the town of Berwick-on-Tweed. It may, however, take cognizance of matters arising abroad if the parties are within the jurisdiction, except in cases of actions relating to trespass to lands situate abroad: and it may, under certain circumstances, give leave to sue here even though the defendant is abroad; but the Court has no jurisdiction in actions against independent Foreign Rulers or Foreign Ambassadors and their staffs, even if they are in this country, unless, of course, they choose to submit themselves thereto.

The majority of mercantile transactions are connected with the relations of mercantile persons and with movable property, although land is often acquired for purposes of carrying on a business; but, when so acquired, land is usually, for instance in a partnership, regarded as movable property for the purposes of the business. There are two classes of movable property:—

(1) *Choses in possession*, that is, things which can be touched and handled—termed corporeal chattels—such as a sack of corn or actual coins, and

(*a*) See *post*, p. 326.

(2) *Choses in action*—termed incorporeal chattels—that is, rights in or over something, which rights can be enforced at law, such as debts, shares in joint-stock companies, patents, copyright, etc.

Mercantile law treats mainly of the acquisition of, or the dealing with, these two classes of property, and of the relations between the persons who perform acts in connection therewith.

Having noticed, in outline, the procedure by which legal proceedings are commenced and carried on, it will be useful now to consider what causes of action are such as are likely to arise in mercantile affairs and how best to avoid them by adherence to the rules in connection with that branch of the law. Practically the whole of commercial life is a series of agreements or the performance of matters in fulfilment thereof. The conditions under which such agreements are of legally binding effect will be considered in the ensuing chapters ; but if they are binding agreements—or contracts—then they will give rise to rights and obligations which may be the cause of actions if those rights are violated or the obligations disputed or ignored.

CHAPTER 1

GENERAL LAW OF CONTRACT

Who may Contract.

Almost every person may enter into a contract; and the few exceptions to this rule will be dealt with in this chapter. The ordinary contracts of daily life may be entered into whether persons are under or over 21, or bankrupt; but there are certain business contracts which such persons may either be precluded from entering into, or may not be in a position to enforce if this should become necessary. These are fully explained hereinafter in this chapter, and will not, therefore, be further considered at present.

How Contracts are made.

In everyday business life, practically every act is either the attempt to enter into a contract, or the actual making of one, or the result of and the carrying out of a contract. *A*, the city clerk who leaves his house in the morning to proceed to business, enters into several contracts before he reaches his office. He tenders a penny and mentions the title of his favourite journal: the newsvendor takes the money and hands him the newspaper. *A*'s first act was the acceptance of an implied offer on the part of the newsvendor to sell his newspapers to all who should be willing to pay the price, and the contract was complete on the acceptance. The handing over of the newspaper and the receipt of the money were acts in fulfilment of the terms of the contract that had been entered into. *A* then boards an omnibus and tenders a fare to the conductor. Here, again, is the acceptance of an offer implied in the omnibus plying for passengers to be carried, and the boarding of the omnibus is an implied agreement to pay the usual fare, and so on. Very many acts in the daily life of *A* are thus agreements or contracts, some express, others implied, but all equally binding if fulfilling certain conditions.

Contracts are Agreements.

A contract is essentially an agreement between parties. To constitute an agreement there must be "mutuality of assent," that is, two minds with the one intention—known as a *consensus ad idem*—so that it is not possible for a man to contract with himself. But, in order that the agreement may be enforceable at law, it must be one that takes a particular form, or is entered into with certain formalities, or that fulfils various other conditions; for a mere agreement is not in itself sufficient to create a contract, there must be the intention to create a legal obligation. It is often stated that a contract is an agreement enforceable at law; but there are many agreements which, while not enforceable at law, are still contracts.

Definition of Contract.

Sir William Anson, in his work on *Contracts*, defines a contract as "an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more parties to the contract to certain acts or forbearances on the part of the other or others."

As will appear hereafter, however, there are many agreements which are valid contracts but which are not enforceable at law unless they fulfil some certain condition laid down by statute.

If the contract is not entered into under seal, the agreement must be in respect of legal consideration, otherwise no action will succeed; for example, A may promise to give *B* a book, and fail to do so; but *B* would have no legal remedy against *A* for not carrying out his agreement. *C* may write to *D* offering to purchase certain articles at a stated price, which offer *D* accepts, but *C* then refuses to carry out his agreement. Here *D* has a legal remedy against *C* for breach of his agreement. The difference is not far to seek—for if an agreement is not for *consideration* (*b*) it must, as stated above, be entered into with certain formalities to make it of binding effect. In the first example there was no consideration for *A*'s promise to *B*, so that no contract exists because the gratuitous promise was not under seal. In the second instance, the agreement has been entered into by reason of legal consideration and by a definite *offer and acceptance* (*c*) and becomes, therefore, a valid and binding contract.

(*b*) See *post*, p. 21.
(*c*) See *post*, p. 25.

Classification of Contracts.

Contracts may be classified in several ways, the most important being—

(1) Contracts of Record.
(2) Specialty Contracts, and
(3) Simple Contracts.

Contracts of Record.—These are such as require for proof the production of the record of the Court (*d*). In modern times the only important instances of contracts of record are judgments and recognizances.

For example, *A* owes *B* £50 under a contract of sale and does not pay it. *B* thereupon sues *A* in the courts and judgment is given in his favour. The judgment merges the rights under the former contract, and *B*'s rights are now on the new and higher contract—the judgment. Sir William Anson in his *Contracts* says that the phrase "contract of record" is unfortunate as it suggests that an obligation springs from agreement, whereas really it is imposed upon the parties *ab extra*, i.e., by outside authority, and has nothing to do with agreement.

Specialty Contracts.—These contracts are usually called *deeds* and are contracts under seal. Strictly speaking, signing is not necessary, although it is eminently desirable that deeds should be signed. What *is* necessary is that they should be in writing and "sealed and delivered." "Writing" does not necessarily mean by hand; it may be typewritten or printed, and may be on any material of paper or parchment. Nowadays, sealing is a mere formality, the seal as a rule consisting of a wafer or small piece of wax previously affixed to the document. The party who seals touches the wafer with his finger, thereby adopting it as his own seal. Usually he says "I deliver this as my act and deed," and this amounts to "delivery" of the document even though he should retain it in his own possession. But delivery may be either actual or constructive. If he make delivery to some one not a party to the deed, subject to a condition being fulfilled, the document is called an *escrow* and has no effect until the condition is fulfilled. It is questionable whether delivery subject to a condition to a party to the contract makes the deed an escrow, but it was decided in the case of *London Freehold and Leasehold Property Co.* v. *Suffield* (1897) that, where the party was one of several grantees and also solicitor of the grantor and the other grantees, the document may be an escrow if conditionally delivered to him in his character of solicitor. Deeds were formerly distinguished as either indentures or deeds poll—

(*d*) See *ante*, p. 3.

the first had their edges indented and the others were cut square; but there is now no difference in their legal effect. Deeds are often made in duplicate. Sometimes both parties sign both copies, but often each party signs one copy only. In the latter case each party retains the copy signed by the other party. Such duplicate documents are often referred to as counterparts. Where deeds are executed in counterpart it is not necessary that the full amount of stamp duty be paid on each copy; one copy is marked with the full duty, and the other, if the duty is 5*s*. or less, with the same amount as the original, but where the duty is over 5*s*., the counterpart is marked 5*s*. only. This rule applies to all counterpart documents, whether under seal or not.

The term *Covenant* is sometimes applied to a contract under seal, as distinct from *Agreement*, which is loosely used to mean a simple contract, and a mere gratuitous *Promise*, which is an undertaking not legally enforceable.

Simple Contracts.—These are also called "parol" contracts, and are all those not under seal. They may be in writing, or verbal, or implied—the term "parol" applies to all. If they be merely written and not specialties, they are parol. In many cases writing is not necessary, as often there is a subsisting contract without it, while others may be in writing only because writing is required by statute as a condition precedent to proof of the contract.

Points of difference between Specialty Contracts (deeds) and Simple Contracts.—The differences between specialty contracts and simple contracts are as follows—

(1) In the case of specialty contracts no consideration is necessary, except in contracts in restraint of trade (*f*); but in the absence of consideration specific performance will not be granted in equity.

(2) A contract by deed merges in itself—that is, swallows up or supersedes—a simple contract to the same effect between the same parties.

(3) Statements in simple contracts are presumptive, that is, *prima facie*, evidence of their truth against the maker. In a deed, however, they are absolutely conclusive in the absence of proof of fraud or duress, or unless the false statement is due to a mistake in respect of which equity would grant relief. This is known as *Estoppel by Deed*, and no evidence is admitted to deny or explain such statements in a deed, unless there is what is termed a "latent ambiguity." (*e*) If a person has by words or

(*e*) See *post*, p. 55.

conduct induced others to believe in the existence of a certain state of facts, knowing that they might or would act on such belief, he is thereafter prevented from denying the existence of such state of fact. If not in a deed, this is called *Estoppel in pais*, that is, by conduct.

(4) A right of action under a contract by deed is barred after twenty years (or after twelve on certain contracts with regard to land). Rights under simple contracts are barred after six years. (*f*)

(5) A deed is more binding on the parties, of more permanent force and more definite in its terms, but a simple contract is more easily and conveniently entered upon, owing to the absence of formality and form requisites, and the avoidance of heavy stamp duties.

Executory and Executed Contracts.—Another classification of contracts is to distinguish between executory and executed contracts. In *executory* contracts, both parties undertake to do or not to do certain things at some future time. In *executed* contracts one party performs his part at once. An example of the former would be an agreement to purchase a horse next month; an example of the latter would be to pay for and purchase the horse on the spot leaving delivery until next month.

Express and Implied Contracts.—Yet another classification is into *express* and *implied* contracts. The former are those stated verbally or in writing, the latter being those " which reason and justice dictate, and which the law, therefore, presumes that every man undertakes to perform." An example of express contract would be a man's entering a shop and asking to be supplied with a loaf of bread; an implied contract would exist if he entered the shop, took up a bun and commenced eating it. The law would presume his intention of paying for it. Instances of cases where the law will presume the formation of a contract are given under the heading of CONSIDERATION. (*g*)

Quasi Contracts.—There are also certain cases in which the law imposes an obligation similar to that arising under a contract, although it is not the result of agreement, express or implied. Such are termed *Quasi Contracts*, e.g., where a debtor, one of several co-debtors, has paid the debt in full, the law imposes an obligation on the part of the others to pay their proportionate share.

Essentials of Contract.

It is essential for a proper understanding of the Law of

(*f*) See *post*, p. 68.
(*g*) See *post*, p. 25.

Contract to note well the requisites of a Contract. These are—

(1) Form,
(2) Consideration,
(3) Offer and Acceptance,
(4) Capacity to Contract,
(5) Legality and Possibility, and
(6) Absence of Mistake, Misrepresentation, or Fraud.

In the event of any one of these elements being wanting, the agreement will be either—

(*a*) *Void*, that is, not necessarily illegal but destitute of all legal effect, e.g.,
  (1) Contracts opposed to public policy, e.g., involving Maintenance and Champerty.
  (2) Agreements to commit a crime or civil injury.
  (3) Agreements in aid of an illegal object.
  (4) Agreements in undue restraint of trade.
  (5) Trading with enemy aliens.
  (6) Agreements offending against the Truck Acts, etc.
  (7) Agreements of an immoral character.
  (8) Stock Exchange transactions not intended to result in legitimate business.
  (9) Where the contract is based on misapprehension of facts by both parties.
  (10) Gaming and wagering contracts.
  (11) Contracts offending against Leeman's Act.
  (12) Certain contracts with infants.

(*b*) *Voidable*, that is, it can be affirmed or repudiated at the option of one of the parties, e.g.,
  (1) Partnership and shareholding contracts with infants, as well as other contracts with infants, not void or binding.
  (2) Lunatics' and drunken persons' contracts.
  (3) Contracts induced by fraud, misrepresentation, undue influence, or duress.
  (4) Contracts where there has been a mistake of fact by one of the parties.

(*c*) *Unenforceable*, that is to say, it may be a valid contract but it cannot be enforced in a court of law owing to non-compliance with some statute, e.g.,
  (1) Contracts of Marine Insurance not evidenced by writing.
  (2) Contracts enumerated in Section 4, Statute of Frauds, 1677, if not in writing and signed by the party to be charged or his agent.

(3) Acknowledgments of debts barred by the Statutes of Limitation, unless given in writing.
(4) Debts barred by the Statutes of Limitation.
(5) Contracts for the sale of goods of £10 or upwards unless the conditions of Section 4, Sale of Goods Act, 1893, are complied with.
(6) Bills of Exchange, Notes, and Cheques, if not in writing.
(7) Assignments of Copyright, unless made in writing.
(8) Agreements limiting the liability of a Railway Company as Common Carrier, unless made in writing.

Most of the above matters are considered in detail hereinafter.

FORM

As a rule (with a few exceptions mentioned hereinafter) no particular form is necessary to enter into a contract, except (1) that a deed must be in writing and under seal, and is sufficient in itself to give a right of action, and (2) that there must be consideration to support a simple contract in order to make it enforceable. What is required is the *agreement* of the two minds on the same point, that is, the *consensus ad idem* previously referred to. This may be set out in writing, or partly in writing and partly verbal, (*h*) or wholly verbal, or it may be implied from the conduct of the parties. In the cases where a special form is necessary it will be found that it must be in writing, either under hand or under seal, while sometimes a verbal contract, although good in itself, cannot be enforced by action unless it is *evidenced* by writing.

Contracts which must be entered into under Seal.

(1) Contracts made by Corporations (with many exceptions).
(2) Gratuitous Promises.
(3) Contracts by which British Ships are transferred.
(4) Conditional Bills of Sale.
(5) Contracts for sale of original Sculpture, together with the copyright in it.
(6) Conveyances of Land (which of course includes houses), Mortgages, and Leases for upwards of three years.
(7) Usually, transfers of Shares in Joint Stock Companies.

Simple Contracts which must be in Writing but need not be Sealed.

(1) Bills of Exchange and Promissory Notes.

(*h*) See *ante*, p. 12.

(2) Contracts of Marine Insurance.
(3) Assignment of Copyright.
(4) An acknowledgment to take a debt out of the operation of the Statutes of Limitation.
(5) Agreement by an executor to answer damages out of his own estate.
(6) Guarantees.
(7) Agreements in consideration of Marriage.
(8) Contracts for sale of Lands, etc.
(9) Agreements not to be performed within a year.
(10) Agreements limiting the liability of a Railway Company as Common Carrier.
(11) Agreements to lend money for business purposes, or for taking a share of profits, without being a partner.
(12) Agreements for the sale of goods of £10 or over (unless fulfilling one of the other conditions laid down in the Sale of Goods Act, 1893).

Most of the above matters are considered more fully hereinafter. Many of these contracts would be good even though not in writing, but could not be enforced.

Contracts which, although valid, are unenforceable by Action unless in Writing.

It is provided by Section 4 of the Statute of Frauds, 1677, that

"No action shall be brought
(1) to charge any executor or administrator upon any special promise to answer damages out of his own estate, or
(2) to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, or
(3) to charge any person upon any agreement made upon consideration of marriage, or
(4) upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, or
(5) upon any agreement that is not to be performed within the space of one year from the making thereof

Unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised."

Formerly, by Section 17 of the Statute of Frauds—extended by Section 7 of Lord Tenterden's Act, 1828—and now by Section 4 of the Sale of Goods Act, 1893, it is provided that

"A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall

accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract be made, and signed by the party to be charged, or his agent in that behalf."

The existence of the contract is not affected by the above provisions, and it exists independently; but it is unenforceable by action unless evidenced in accordance with the conditions mentioned. The writing need not be made at the time when the contract is entered into, for as laid down in the case of *Lucas* v. *Dixon* (1889) it may be made at any time before action is commenced; but it may not be made after that time. Such writing need not necessarily be a document drawn up for the purpose of evidencing the particular contract; any document is sufficient that is signed by the party to be charged, or his agent, providing it contains sufficient reference to the terms of the contract. In the case of *Re Hoyle*, *Hoyle* v. *Hoyle* (1893) a recital in a will was held to be sufficient memorandum to satisfy the statute.

In spite of these provisions being observed, consideration is still required unless the contract be under seal (and for contracts in restraint of trade (*i*) even though under seal); and the writing must contain a statement of the consideration, if in fact a specific price has been agreed, or it must be capable of being implied therefrom (except in the case of guarantees, where the consideration, although it must exist, need not be stated).

How Memorandum in Writing may be effected.—The memorandum must be complete, that is to say, it must show the whole of the agreement—the names of the parties, the subject matter, and the consideration. It need not, however, be contained in one document, it can extend over several (e.g., a series of letters contained in correspondence) provided they form together a connected whole; but, if one of the signed papers cannot be connected with an unsigned paper without parol evidence, such evidence will not usually be permitted. Such at least was the rule laid down in *Boydell* v. *Drummond* (1809), where printed copies of a prospectus regarding a publication were lying on the counter of a shop, together with a book headed "Shakespeare Subscribers: their signatures." *A* signed his name in the book, and the shopkeeper sought to make him liable on a contract to take a copy of the publication. It appeared that there was nothing in the book containing the signature which referred to the prospectus; nor *vice versa*. It was held that there was no binding contract, for the following reason: "If there had been anything in the book which had referred to the particular

(*i*) See *post*, p. 41.

prospectus, that would have been sufficient; if the title to the book had been the same as the prospectus, it might perhaps have done; but as the signature now stands, without reference of any sort to the prospectus, there was nothing to prevent the plaintiff from substituting any prospectus, and saying that it was the prospectus exhibited in his shop at the time to which the signature related." But this strict rule has been somewhat relaxed, and parol evidence is now admitted to show the connection between two or more documents connected with the same contract, but not *expressly* referring to each other, although their mutual connection is clear. Thus, in *Oliver* v. *Hunting* (1890), *C* agreed to sell to *D* a freehold estate for £2,275, and signed a memorandum which referred to every essential except the actual property to be sold. *D* sent a cheque for the deposit, and *C* in replying said "I beg to acknowledge receipt of cheque on account of the purchase money for the Fletton estate." It was held that parol evidence could be admitted to explain the circumstances under which the letter was written. In this latter case there was a reference to another document in the letter, but in *Boydell* v. *Drummond*, cited above, it should be noted there was no obvious reference to another document. In the case of *Pearce* v. *Gardner* (1897), all the terms of the contract except the name of the person to whom it was addressed appeared in the document relied on, and the envelope in which it was sent was allowed to be put in evidence to show who the other party was. A letter written within the scope of his authority by an agent and referring to an unsigned document may be sufficient memorandum, although the agent was not authorized to sign it as a record of the contract. A letter containing a repudiation of liability was deemed sufficient memorandum in the case of *Dewar* v. *Mintoft* (1912). Oral evidence may be admitted to show the identity of documents, subject matter, and persons referred to in the writing. In *Cave* v. *Hastings* (1881), the term "our arrangement" was used, and this was admitted as showing connection with an arrangement set out in a previous letter.

The names of the parties must be on the paper or, at any rate, the name of the party to be charged and a sufficient description of the other party. The term "vendor" has been held to be insufficient as a description, but "the proprietor" has been deemed sufficient where it was shown that only one proprietor was in existence, providing that evidence is produced to show the connection; and in *Allen and Co., Ltd.* v. *Whiteman* (1920) it was held that a statement that a named person is the husband of the vendor is sufficient, so also if it appears on the particulars of sale that property is being sold by order of

"the mortgagees" the vendors are sufficiently identified for the purpose of the statute.

Signatures may be in any medium—ink or pencil, printed or stamped—and even a mark or initials will be sufficient. The only necessary signature is that of the party to be charged or his duly authorized agent; although of course, as a rule, both parties sign. To be a sufficient signature, it must be evident that it is intended to relate to the whole document, although it need not necessarily be at the end, for if the party to be charged has written out the document himself and his name appears in any part of it, that is within the statute. So that where a person drew up an agreement in his own handwriting commencing "I, *A.B.* agree . . ." and his name was not at the end, this was held to be a sufficient signature to satisfy the provisions of the statute; but such a signature is not sufficient for, say, a Will (a matter, of course, outside the present work), where there must be not only the signature at the end, but also the signatures of two witnesses who both sign as having seen the testator sign the Will.

Who may sign the Memorandum?—If the person who signs the memorandum is an agent it will be a question of fact as to whether he was an agent for the purpose of binding his principal. This will depend on the circumstances; but it is essential that he should sign as a party and not as a witness. It is permissible for a person to be agent for both parties, but if he himself is a party he cannot sign as agent for the other. Auctioneers are agents for both parties in a public sale, and they bind both parties by their signature. They are, in the first place, agents for the vendor; and, on the fall of the hammer, become also agents for the buyer, and this authority cannot be revoked. As a rule such authority does not extend to the auctioneer's clerk; but, under the circumstances of a party assenting expressly or impliedly, he will be bound by the signature of the clerk.

Part-performance.—If a contract falling under Section 4 of the Statute of Frauds has been partly performed, such part-performance being clearly attributable to the existence of the contract, then, if the contract is one which might be the subject of a decree of specific performance (e.g., sale of land), the absence of writing may not necessarily prevent an action being brought; but a contract complying with the section or with the Sale of Goods Act may not be varied in its terms by an agreement either oral or in writing which does not itself comply with the statute, although it was held in the case of *Morris* v. *Baron and Co.* (1918) that a subsequent parol contract, even if not in writing, may operate as express or implied *rescission* of the previous contract.

Guarantees.—A guarantee, or the promise to answer for the debt, default or miscarriage of another, must be evidenced by a written memorandum; but, as mentioned above, it is not necessary that a statement of the consideration should appear, although there must be consideration of some kind. [For further discussion on this point, see Chapter 10 (*k*).]

In the leading case of *Birkmyr* v. *Darnell* (1704), such a promise is within the statute only if the other person remains liable, otherwise it is not within the statute and need not be in writing. So if *A* enters a shop and asks the shopkeeper to supply goods to *B*, saying "If he does not pay for them I will," here *B* is primarily liable and remains liable, and *A* will not be called upon to pay unless *B* fails to do so. This is a guarantee, and therefore needs to be in writing; but if *A* had simply asked for goods to be supplied to *B* and said, "Charge them to me," that is an agreement on *A*'s part to pay and not a guarantee, and does not therefore fall within the statute.

Agreement in consideration of marriage means an agreement having some bearing on the marriage, such as a marriage settlement, and it does not include the actual promise to marry.

Any interest in lands, tenements, and hereditaments is a matter connected with property law, and is therefore not within the province of this work; but it has been held that the section applies to all contracts concerning lands, and not only to contracts for sale. It may be noted, too, that it was decided in *Driver* v. *Broad* (1893) that a debenture of a company giving a floating charge "over all property of the company whatsoever," where the property consisted in part of leaseholds, was an interest in lands.

Agreement not to be performed within a year means one which cannot, or which it is intended shall not, be performed on either side within the year; and the mere fact of its being capable of being so performed, if the intention is that it shall not be, is not sufficient to take it outside the statute; but it is otherwise if it is to be performed by one party within the year, so that where, as in *Donnellan* v. *Read* (1832), *A*, a tenant of land, verbally promised that if his landlord would lay out £50 on improvements he would pay £5 a year more rent for the next fourteen years, it was held that as the £50 was to be laid out at once, that is, the whole of the agreement by one party to be carried out within the year, the statute did not apply and writing was not necessary. A contract for a definite period of more than a year, but which is subject to a clause by which it can be determined within the year by notice by either party, is within the section; but not

(*k*) See *post*, p. 225.

one which is for an indefinite period which may or may not come to an end within the year, according to circumstances, as was decided in the case of *Hanau* v. *Ehrlich* (1911). If the engagement of a servant is to commence immediately and continue for one year, there is no necessity for the writing as evidence ; but if to commence at any later date and to continue for a year certain, the contract falls within the statute. In the case of *Smith* v. *Gold Coast and Ashanti Explorers, Ltd.* (1903), it was decided that no memorandum or note in writing was necessary where the employment was to commence on the day following that upon which the agreement was made, as the law takes no account of fractions of a day ; but it is necessary where the employment is to commence on any later day.

Agreements for the sale of goods cannot be enforced unless made in accordance with this section, that is, if the agreement is not to be performed within the year, even though there has been " acceptance and receipt " of part of the goods under Section 4 of the Sale of Goods Act. (*l*)

On a point of procedure, it may be noted that the Statute of Frauds must be specially pleaded where it is intended to rely on it as a defence.

The memorandum of agreement, as in the case of any other agreement under hand, if not otherwise specifically charged with duty, must be stamped with a sixpenny stamp, which must be cancelled by the party first signing the agreement. If stamped afterwards it must be by impressed stamp within fourteen days of the date of execution. Certain agreements, however, are exempt from stamping :—

(1) Where the subject value is less than £5, or is incapable of pecuniary measurement.
(2) Contracts for the hire of labourers, artificers in manufactures, or menial servants.
(3) Contracts relating to the sale of goods, wares, or merchandise.

CONSIDERATION

As already stated, unless a contract is under seal there must be consideration, the legal maxim being, *Ex nudo pacto non oritur actio*—(out of a bare agreement no action arises). Consideration is of two kinds, *good* and *valuable*. Good consideration is natural love and affection, but good consideration is not sufficient in itself to support a simple contract, which needs valuable consideration. This has been defined in the case of *Currie* v. *Misa* (1875) as " some right, interest, profit or benefit

(*l*) See *post*, p. 131.

accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other"—in other words, a *quid pro quo*, that is, some equivalent given in return for a promise made, to carry it outside the sphere of a gratuitous promise. Ordinarily, such equivalent is the payment of money for goods or for doing certain work. There are several points to bear in mind in connection with consideration, viz.,

(1) Consideration need not be adequate, but it must be real.
(2) It must proceed from the other party to the agreement.
(3) It must be something that can, if necessary, be enforced by the law, that is to say, it must not be vague and intangible in character.
(4) The consideration must be legal.
(5) It must not consist of an act which the party is already under a legal obligation to perform.
(6) It must not be past consideration, with certain slight exceptions.

Adequacy of Consideration.—In the case of Bills of Exchange, it is always presumed that a valid consideration exists, but this may be rebutted (*m*) and such consideration may consist of any consideration sufficient to support a simple contract or of any antecedent debt or liability. It was laid down in *Bolton* v. *Madden* (1874) that "the adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the court when it is sought to be enforced." So that a contract will not be set aside by the courts on account of inadequacy of consideration unless it is so grossly inadequate as to raise a presumption of fraud. The contract will be enforced if the promise is either for the benefit of the defendant or to the trouble or prejudice of the plaintiff; so that, for instance, any of the following would be regarded as adequate consideration:—a cash payment; compromising an action or forbearing to sue on request; giving up a claim which, although honestly made, could not have been enforced; or, as laid down in *Carlill* v. *Carbolic Smoke Ball Co.* (1893), an inconvenience suffered by one party at the request of the other. (*n*)

But, although consideration need not be adequate, it must be *real*; so that a promise to do what the promisee can already legally demand is not real, but, if at the request of a third party one of the parties carries out his promise this may, as between himself and the third party, be sufficient as consideration. In the case of *Foakes* v. *Beer* (1884) there was an agreement not under seal between the judgment debtor and the judgment

(*m*) See *post*, p. 108.
(*n*) See *post*, p. 26.

creditor whereby on the debtor's paying so much down on account of the judgment debt and the costs, and on condition of his paying the balance by instalments, the creditor agreed not to take any proceedings on the judgment. It was held that the agreement was *nudum pactum*, being without consideration. So, too, in *Crocker* v. *Crocker* (1920), where a husband made a written offer to his wife not to proceed with divorce proceedings which he had contemplated against her, it was held that there was no evidence of consideration moving from the wife, and the offer was not therefore binding on the husband.

Payment of a smaller amount is not in itself sufficient consideration to discharge the payment of a larger amount, but if a Bill of Exchange be given, or in fact anything other than legal tender, or if the smaller sum be paid by a third party, or if it be paid at a date before that on which the larger sum was due, this would be sufficient consideration—and the payment of a smaller sum may operate as *satisfaction* if a receipt is given under seal, for this, being a deed, would operate by way of estoppel and requires no consideration to support it. It was held in *Day* v. *McLea* (1889) that if a debtor remits a smaller sum than a larger amount, which he disputes, " in full settlement " of the creditor's demand, the creditor may give a receipt " on account " and still sue for the balance, for the fact that the creditor retained the cheque is not in itself sufficient evidence of accord and satisfaction (*o*). It might appear that a composition with creditors is not supported by consideration ; but actually there is the mutual surrender by the creditors of their claims, and this would not therefore be the payment of a smaller sum for a greater.

Consideration must proceed from the promisee.—If *A* contract with *B* to supply goods at *C's* expense where *C* is not a party to the contract, there is no contract at all ; for *C* could not, unless he be a party, be forced to pay for goods delivered to *B*. The consideration, in this case the purchase price, must move to *A* from *B*, the other party to the agreement.

Consideration must not be vague or indefinite.—It must be of such a nature as to enable the Courts to arrive at a definite conclusion as to what the parties have undertaken, and the degree to which they have incurred obligation ; e.g., a promise to pay " such remuneration as shall be deemed right " will not be valued by a Court ; and a promise " not to bore " another person was held to be too vague to form consideration for a contract.

Legality of Consideration.—Consideration must be legal, that is to say, it must not be—

(*o*) See *post*, p. 59.

(1) Of an immoral or a criminal nature;
(2) An agreement to commit an act opposed to public policy or to trade with the enemy;
(3) A contract to impede justice or to defraud the Revenue;
(4) A marriage brokage contract;
(5) Certain classes of contract in restraint of trade, or involving maintenance or champerty. (*p*)

In *Ford* v. *Radford* (1920), plaintiff started a " Turf Register " business, to collect gaming debts which were not recoverable under the Gaming Acts. The defendant became a member of the society and agreed that if the plaintiff recovered any debts due to defendant they would share equally. Plaintiff alleged that defendant collected the debts himself and now asked for his share under the agreement. It was held that this agreement was illegal and void, being champertous, and contrary to public policy, as there was no community of interest between the parties.

Consideration must not be an act which the party is already under legal obligation to perform.—Obviously if *A* is already legally obliged to pay £20 to *B*, such payment cannot be consideration for a new promise on *B's* part. Similarly, if *B* is under legal obligation to perform a certain act for *A's* benefit, he cannot demand that *A* shall pay him a sum of money by way of consideration for doing it.

Consideration must not be past.—A mere voluntary courtesy is not sufficient to support a subsequent promise, or, in other words, past services rendered voluntarily, however valuable, are not sufficient to support a simple contract. If *A* owes money to *B* and afterwards gives *B* a security, the antecedent debt is not sufficient consideration for it, but if he give a Bill of Exchange the consideration will be sufficient to support it. If *C* sells a horse to *D* and afterwards gives him a warranty that the horse is sound, no action could be brought on the warranty as the consideration for it is past. But if the warranty had been given while bargaining or at the actual time of sale, it would hold good and could be sued upon by the purchaser should the horse prove to be unsound. Although a voluntary courtesy is not sufficient, a courtesy moved by a previous request will be construed as possessing sufficient consideration. In *Lampleigh* v. *Brathwait* (1616), a man who had committed a criminal offence requested the plaintiff to take journeys and to exercise his influence to secure a pardon for him. After the pardon had been obtained he promised plaintiff £100 for work done, and it was held that the promise was binding as the defendant had

(*p*) See *post*, p. 40.

requested the plaintiff to perform the work. In some cases, falling within the following circumstances, the law implies a previous request—

(*a*) Where the plaintiff has been compelled to do that which the defendant was legally compellable to do, e.g., where a surety has been made to pay the amount for which he was surety.

(*b*) Where the plaintiff has voluntarily done that which the defendant was legally bound to do, and in consideration thereof the defendant afterwards expressly promises.

(*c*) Where the defendant has adopted the benefit of the consideration, e.g., where a tradesman sends goods to a person who had not ordered them and the person elects to retain the goods.

Consideration may be classified also into *Executed* and *Executory*. In the former case the consideration is transferred on the making of the contract, but in the latter case the consideration remains to be given effect to. Executed consideration must not be confused with *Past* consideration. Past consideration, which usually has no legal effect, is a benefit given *before* the time of making, executed consideration is given *at* the time of entering into the contract.

OFFER AND ACCEPTANCE

The parties to a contract must have the same intention and, no matter how complicated or involved the agreement may be, there must always be a definite offer and an unqualified acceptance. "An agreement is not a contract unless the terms are certain or capable of being made certain." *A* says to *B*, "I will sell you my horse for £50, will you have it?" *B* says, "Yes"; then the contract is complete.

There are, however, certain definite rules to be observed, viz.,

Offer.

(1) The offer may be to a definite person or to persons generally; but, in order to make a contract, acceptance must be by a definite person or persons. The offer must be communicated to the offeree or his agent.

(2) The offeror may attach any conditions he pleases, but they must be notified to the offeree.

(3) The offeror cannot bind the other party.

(4) The offer may be revoked at any time before acceptance.

(5) Revocation must be communicated.

Acceptance.

(6) Acceptance must be unconditional.

(7) The offer can be accepted only by the party to whom made (if made to a particular person) and acceptance must be communicated.

(8) Acceptance need not be in definite verbal or written form.

(9) Acceptance must be within the time stipulated, or within a reasonable time.

(10) Acceptance cannot be revoked.

(1) *Offer may be to a definite person or generally; but acceptance must be by a definite person.*—Although the offer must be definite, it need not be made to a definite person; but if it is made to a definite person it can be accepted only by that person. It may, however, be to the world at large, as, for instance, by an advertisement in a newspaper; but there is no contract until the offer has been accepted by a definite person. Thus, in the case of *Carlill* v. *Carbolic Smoke Ball Co.* (1893), referred to previously, a patent medicine company advertised that they would give £100 to anyone who contracted influenza after using their specific for a certain period. *A* did use the article for the prescribed time, and in accordance with the directions; but afterwards he contracted influenza and brought an action to recover the £100 from the company. It was held that there was a sufficient offer, and that the plaintiff by performing the conditions had accepted the offer. [See under (7) below as to why acceptance in this case need not be communicated.]

(2) *Offeror may attach any conditions he pleases, but they must be notified to the offeree.*—An offeror may attach any conditions he pleases to his offer, but they must be definite and must all be brought to the notice of the offeree. Any terms or conditions must be observed by the acceptor, for instance, an offer stating that acceptance must be by telegram could not be accepted by letter, and any such acceptance may, as in the case of *Quenerduaine* v. *Cole* (1883), be evidence of such unreasonable delay as to justify withdrawal of the offer; although, obviously, the reverse would be valid, that is, where the offeror specified that a letter would be sufficient, and the acceptor telegraphed.

(3) *Offeror cannot bind the other party.*—The offeror cannot bind the other party by any attempt to dispense with a communication of acceptance. If a person made an offer of certain goods at a stated price, and added, "If I do not hear by noon to-morrow, I shall conclude you accept," he could not legally regard the silence of the other party as an acceptance. In the case of *Harvey* v. *Facey* (1893), *A* telegraphed to *B* asking, "Will you sell B H P? State lowest price." *B* replied, "Price is

£900," and *A* telegraphed, "Agree to buy at £900." It was held that there was no contract, as this was not an offer by *B* and it could not therefore be accepted by *A*.

(4) *Offer may be revoked at any time before acceptance.*—An offer once made may, unless it is under seal, be revoked at any time before acceptance, even if the offeror has agreed to leave it open for a certain length of time, unless, of course, consideration has been given for keeping the offer open; for, until it is accepted, he has a *locus penitentiæ* (i.e., an opportunity of repentance) allowed him. Thus, *A* might offer to sell a horse to *B* for £50 and say that he could have three weeks in which to consider the matter. But *A* could sell the horse to another purchaser at any time before acceptance by *B* if, as in the case of *Dickinson* v. *Dodds* (1876), there had been no consideration for the promise to keep the offer open, and it could not be enforced as a contract; so that if *B* had knowledge of the sale he could not then accept the offer and attempt to bind *A*. But if *B* had no knowledge of the sale and had not been informed of any revocation, the offer would hold good, and he could make a valid acceptance.

(5) *Revocation must be communicated.*—Revocation of an offer must, however, as decided in the case of *Byrne* v. *Van Tienhoven* (1880), be communicated in some way to the other party, otherwise he may accept; and, if he does so while the offer is presumably open, he will have a right of action against the offeror. An offer is presumed to be open for a reasonable time if no time is specified, or until it is revoked. But what is a reasonable time depends, obviously, on the circumstances of the particular case. The death of either party before acceptance acts as a revocation of the offer, even though the fact is unknown to the other party.

(6) *Acceptance must be unconditional.*—To be binding, the acceptance must be unconditional, that is to say, any proposed modification of the terms or the manner or form of acceptance is not an acceptance of the offer but is a counter-offer. Thus, in *Jordan* v. *Norton* (1838), *A* wrote to *B* offering to buy his mare if he "warranted her sound and quiet in harness." *B* wrote back that he accepted the offer and warranted her sound and quiet in *double* harness; he had not tried her in single harness. It was held that *A* had not assented to this, which was, in effect, a counter-offer, and not an acceptance of his offer.

(7) *Offer can be accepted only by the party to whom made, and acceptance must be communicated.*—The offer can be accepted only by the party to whom it is made, and such acceptance must be communicated to the person who made the offer, unless the offeror has waived notification, e.g., if he expressly or impliedly

says that it will be sufficient to act on the offer, as in the case of *Carlill* v. *Carbolic Smoke Ball Co.* already cited, in which case the performing of the act is sufficient acceptance. The acceptance may be tacit, as, for instance, a person purchases a ticket from a railway company containing a statement that the passenger agrees to the conditions on the back of the ticket or contained in the company's time-table books, and acceptance of the terms will be presumed if the passenger had reasonable notice of these conditions. What is reasonable notice in such cases depends on the circumstances. If he had read the conditions, then, without any doubt, he is bound by them ; and also if he knew or saw that there were conditions but he did not trouble to read them ; or, as in *Parker* v. *South Eastern Railway* (1877), where the conditions were stated plainly on the face of the ticket so that if he did not read them he was guilty of negligence.

(8) *Acceptance need not be in definite verbal or written form.*—The acceptance need not be put into definite verbal or written form ; for, if a tradesman exposes goods marked with a price for sale outside his shop, any person who comes along and picks up the goods and tenders the money has made an acceptance. At a sale by auction, the person who bids offers to buy at that price, and the fall of the hammer is an acceptance of the offer.

(9) *Acceptance must be within the time stipulated or within a reasonable time.*—If a time is mentioned when the offer is made, the offer must be accepted within that time. If no time is specified, then it must be accepted within a reasonable time. What is a reasonable time is a question of fact depending on the particular circumstances. On the matter of time, the use of the post often has an important bearing.

Use of the Post.—The party—usually the offeror—who first uses the post as a means of communication makes the Post Office his agent, so that an acceptance of an offer made by post is complete as soon as it is posted ; that is, in effect, as soon as it is handed to the offeror's agent. Thus, in *Adams* v. *Lindsell* (1818), *A* wrote to *B* on 2nd September offering to sell wool at a certain price and asking for a reply by return of post. The letter miscarried and was not delivered to *B* until 7th September. *B* replied at once, and his acceptance was received on 9th September ; but the wool had been sold on the 8th. It was held that *B* could recover for non-delivery of the wool, for his acceptance had been posted (that is, handed to the offeror's agent) before the wool was sold. A letter revoking the offer is of no effect if received subsequently to the posting of the acceptance, even though the latter has not then reached the offeror or, as in the case

of *Household Fire Insurance Co.* v. *Grant* (1879), may never reach him. In *Henthorn* v. *Fraser* (1892) *A* received from *B* an offer to purchase certain property for £700, the option to purchase to remain open for fourteen days. On the day following, *B* wrote a letter which he posted at noon withdrawing the offer; but it did not reach *A* until 5 p.m. and *A* had meanwhile, at 3.30 p.m., posted a letter of acceptance, which reached *B* at 8 p.m. It was held that, as according to the ordinary usages of mankind the post might be used as a means of communicating the acceptance, the contract was complete as soon as the acceptance was posted. The contract was complete on the posting of the letter of acceptance, and the revocation came too late. In the case of *In re London and Northern Bank, ex parte Jones* (1900), *C* applied for shares in a company, and afterwards, on 26th October, wrote a letter withdrawing his application, which letter was received by the company on 27th October at 8.30 a.m. On the afternoon of 26th October, the directors had allotted shares to *C* and the notice was prepared that night and taken to the precincts of the G.P.O. at 7 a.m. on 27th October. Here the letters were handed to a postman who, for a fee, offered to take them. Evidence showed that the letter was not actually posted until 11 a.m. and, further, that postmen are forbidden by the Post Office rules to take charge of letters. It was held, therefore, that the letter of withdrawal was received before the letter of allotment was posted, and there was no contract binding *C* to take the shares. According to the decision in *Henthorn* v. *Fraser*, cited above, the contract is complete once the acceptance of the offer has been handed to the Post Office, which is the offeror's agent. Neither offer nor acceptance can be revoked once the letter has been posted or the telegram despatched. "The acceptor by posting the letter has done an extraneous act which clinches the matter and shows beyond all doubt that each side is bound." Further, it was decided in *Bolton Partners* v. *Lambert* (1888) that an agreement will be binding when definitely accepted, even though the intention of the parties is that the contract shall be put into more formal shape. In *Thompson* v. *Regem* (1920) it was held that where an offer and acceptance are made subject to a subsequent formal contract, if such contract is a condition or term which until performed keeps the agreement in suspense, the offer and acceptance have no contractual force. On the other hand, if all the terms are agreed on and a formal contract is contemplated only as putting the terms in legal shape, the agreement is effectual before and irrespective of such contract. In *Allen & Co., Ltd.*, v. *Whiteman* (1920), the vendor's agent wrote to the purchaser, "We are authorized to close with you if you will increase your offer to

£450." The purchaser replied that he was prepared to accept the offer, agreeing to the price, and stating, "Kindly forward the contract in due course." It was held that the purchaser's letter was an unqualified acceptance, supplemented by a request to have the contract reduced into formal shape.

(10) *Acceptance cannot be revoked.*—The offer once having been accepted, the contract is complete and it cannot be revoked.

Invitations to Offer.—The party making the first advances is not necessarily the offeror. For instance, a company issues a prospectus and asks for applications for shares. It is, as a rule, an advertisement that the company is ready to consider offers; the application is the offer and the allotment of shares is the acceptance. So that an offer must be distinguished from an invitation to offer. Where tenders are invited for doing certain work the tender, and not the invitation to tender, is the offer; and unless the tender is accepted there is no contract.

Firm Offer.—The term a "firm offer" is often used in mercantile affairs. It really means that the negotiations have crystallized and resulted in a definite offer, which only awaits a definite acceptance to form a binding contract. A "firm" offer has no legal effect until accepted, and is no more binding than any other form of offer if, in fact, such there be.

CAPACITY TO CONTRACT

Every person is presumed to have the capacity to contract until incapacity is clearly proved by the party claiming to benefit by such incapacity. Certain persons are debarred by law from contracting and, as regards others, the presumption of capacity is capable of being rebutted, either wholly or partially. This incapacity may be sufficient to render the contract null and void; or only such as to make it voidable, in which case, if the person entitled to avoid it does not do so, it remains a valid contract.

INFANTS

A person under twenty-one years of age is legally an infant, and he attains his majority on the day preceding his twenty-first birthday. He has no capacity to make certain contracts; but there are others he is capable of making. It is probably true to say that an infant cannot be made a bankrupt; but the point has never been decided. At Common Law an infant's contracts were voidable, not void; that is, unless he repudiated them within a reasonable time of attaining his majority, they were valid and enforceable. If he is ignorant of this right to repudiate, however, he will not be relieved from the consequences

of undue delay in exercising the right. What is a reasonable time will depend, of course, in each case on the particular facts. The Common Law rule has now been altered in some important respects by statute; so that now contracts entered into by infants are either

(1) Void, or
(2) Voidable, or
(3) Binding.

Void Contracts.

By Section 1 of the Infant's Relief Act, 1874, it is enacted that—

> "All contracts, whether by specialty or by simple contract, henceforth entered into by infants *for the repayment of money lent or to be lent*, or *for goods supplied or to be supplied* (other than contracts for necessaries), and *all accounts stated* with infants, shall be absolutely void: Provided always that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable."

Any contracts, therefore, entered into by an infant for (*a*) the purchase of goods other than necessaries, (*b*) the loan of money, and (*c*) accounts stated (i.e., agreed balances of money due) are absolutely void; and in the case of *Nottingham Permanent Benefit Building Society* v. *Thurstan* (1903) a contract was set aside even where an infant secured advances by a mortgage of land and expended the money in building on the land, but it was also decided that where a person has advanced money to an infant to enable him to buy land, the lender could stand in the place of the vendor to enforce the vendor's lien on the land. Further, if an infant fraudulently represents himself as of full age and so borrows money, he cannot be sued for money lent, or for money had and received by him for the use of the lender, or for damages for fraud or in any other form of action; but he can be made to restore the actual thing or things which he has obtained through his deceit, if they can still be traced in his possession. In *Leslie* v. *Sheill* (1914), where an infant fraudulently represented himself to be of full age and borrowed money, it was held that the contract was void and that there was no equitable obligation resulting from the fraud, because such a remedy would involve a personal judgment in debt which was, in effect, enforcing a void contract. There was no question of restitution of the actual ill-gotten money, for the infant had spent all he had borrowed.

Contracts which, if made during infancy, may not be ratified.— By Section 2 of the same Act it is provided that—

> "No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age."

This section is of wider application than Section 1 of the Act, and is not limited to the contracts therein referred to, so that, for instance, as was held in the case of *Coxhead* v. *Mullis* (1868) a ratification of a promise to marry is not binding; there must be evidence of a *new* promise.

By the Betting and Loans (Infants) Act, 1892, it is absolutely void if a person makes an agreement after he comes of age to pay any money which wholly or partly represents, or which is agreed to be paid in respect of, any loan which made to an infant is void; and any instrument, negotiable or not, given in pursuance of such agreement is also absolutely void against all persons whomsoever. Agreements such as those contemplated are valid, however, to the extent of any new advances, as they are only void in respect of money payable on account of previous loans.

Voidable Contracts.

The section of the Act referred to above does not affect contracts incidental to interests in permanent property, such as contracts of tenancy, partnerships, contracts to take shares, and marriage settlements. Therefore, for instance, an infant who holds shares in a company and who does not expressly exercise his Common Law right of repudiation will be deemed to have ratified the contract. The acceptance of dividends after he attained his majority would be regarded as a ratification of the contract.

An infant who remains a member of a partnership after attaining majority will be held liable as a partner. In *Baylis* v. *Dinely* (1815) it was held that if an infant enters into such contracts as leases and accepts rent, or if he continues to occupy under a lease after attaining majority, he will be considered to have ratified the contract.

Binding Contracts.

It was decided in the case of *Cowern* v. *Nield* (1912) that an infant who carries on a business is not liable on contracts made in the ordinary course of the business; but there are certain contracts that are allowed to stand, even against the infant, such as those which, taken as a whole, are to the advantage of the infant, e.g., contracts of apprenticeship or instructional service. If satisfied that the contract is reasonable

and for the benefit of the infant, the Court will, as in *Clements* v. *London and North Western Railway Co.* (1894), enforce the contract even against the infant. CHANNELL J. said in *Green* v. *Thompson* (1899)—" The true question is whether the particular stipulation complained of is so unfair as to make the entire contract disadvantageous to the infant. You may find in any contract a clause which by itself is not to the advantage of the infant ; but that is not enough ; the contract as a whole must be disadvantageous." And if it is not, it will be enforced, even if the contract is executory, as was done in *Roberts* v. *Gray* (1913). Should such a contract contain unreasonable restrictions in restraint of trade they may, if severable, as in *Bromley* v. *Smith* (1909), be declared void, and the remainder of the contract enforced ; but in *Gadd* v. *Thompson* (1911) a reasonable restrictive covenant not to compete in the same line of business at the expiration of apprenticeship was enforced. An infant cannot be sued on a covenant to serve as contained in a deed of apprenticeship, but he may be sued when he comes of age on a covenant to pay a premium, if fair and reasonable, as happened in *Walter* v. *Everard* (1891), where the payment of a premium for the purpose of learning a business was regarded as a " necessary."

What constitute Necessaries for an Infant.—It will be noticed that Section 1 of the Infant's Relief Act expressly excepts " necessaries " from its scope, and an infant is bound, therefore, by a contract for necessaries. But the price must be reasonable. The difficult question then arising is " What are necessaries ? " The position and circumstances of the infant must always be taken into consideration and no precise definition of the term is possible. Necessaries include " his necessary meat, drink, apparel, physic, and such other necessaries, and likewise for his good teaching or instruction whereby he may profit himself afterwards." (*q*) It is the province of the Judge to determine whether the goods supplied can reasonably be termed necessaries, and, if he decides they cannot be so regarded, he gives judgment accordingly ; but, if he considers that they may be of such a nature, he leaves the decision to the jury as to whether in the particular circumstances they are in fact necessaries. It might be held that ten suits of clothes were necessaries for one infant, whereas three suits might not be deemed necessary for another. The whole question turns on the infant's position and station in life. For instance, livery for an officer's servant and a horse, when the infant had been ordered horse-riding by his doctor, have been held to be necessaries ; while goods for the purpose of trading, and refreshments for enabling an undergraduate to entertain, have been held not

(*q*) *Coke's Littleton*, p. 672a.

to be necessaries. Goods supplied to an infant must not only be suitable to his condition in life, but also to his actual requirements at the time of the sale and delivery, and the tradesman who supplies an infant who is already sufficiently supplied with similar articles does so at his own risk, as it was held in *Nash* v. *Inman* (1908) that it is incumbent on him to prove that the infant was not sufficiently supplied at the time in question. An infant is liable for necessaries supplied to his wife and children, in addition to necessaries supplied to himself.

Infant cannot bind Parent or Guardian.—As a general rule, an infant is not held liable for necessaries if he is still residing with his parents, but unless he has authority, express or implied, he cannot, even for necessaries, bind his parent or guardian. Such authority may, however, be implied on very slight evidence as, for instance, if he orders clothes which are sent to the parent's house and no objection is raised.

Infant cannot be sued on a Negotiable Instrument.—It should be noted that though an infant can enter into a contract to pay for necessaries, it was decided in *In re Soltykoff* (1891) that he cannot be sued on a Bill of Exchange or Promissory Note even if given for necessaries ; nor, as laid down in *Walter* v. *Everard*, cited above, is he bound by a bond with a penalty, though given for such necessaries.

Recovery of Money paid.—Whether an infant can recover moneys paid under a contract which he repudiates, or which is in itself void, depends on the question " Did the infant derive any real advantage from the contract ? " ; if he did, he cannot recover the money. For instance, in *Corpe* v. *Overton* (1833), an infant paid money with a view to a partnership but never entered into it, and the court ordered the return of the money. But, in *Valentini* v. *Canali* (1890), the infant had hired a house and purchased the furniture, for which he had paid only a part of the price, and he occupied the house for some considerable period. This contract fell partly under Section 1 of the Infant's Relief Act, so it was set aside ; but, as the infant had used the furniture, it was held that the money already paid could not be recovered. And again, in *Holmes* v. *Blogg* (1818), an infant had occupied premises under a lease which he afterwards repudiated, and the court refused in consequence to order the return of the premium paid for the lease.

The infancy of one party to a contract does not affect the other party's liability, the plea of infancy being a privilege personal to the infant, so that the other party can alone be sued on the contract. But, as specific performance would not be granted against the infant, the latter cannot himself sue for

specific performance. An infant sues by his " next friend," who is responsible for his costs. He defends by his parent or guardian *ad litem* (for purposes of litigation), who is not so responsible. *Prima facie* the father is the infant's " next friend " or, in his absence, the testamentary guardian. But any other person may act as next friend provided he is not under disability and that he has no interest in the action adverse to that of the infant.

MARRIED WOMEN

The law relating to married women has been drastically altered by the Married Women's Property Act, 1882, and the two subsequent Acts of 1884 and 1893, so that it is unnecessary to consider here the old Common Law capacity of married women, which is practically obsolete.

A married woman can now hold property as her own, and can enter into contracts as if she were a *feme sole*, that is, an unmarried woman ; but this branch of the law is still far from satisfactory, for it should be noted that there is no remedy *personally* against a married woman ; and she cannot be committed on a judgment summons for non-payment of a judgment debt, although she may be attached for non-payment of money which is in her possession in a fiduciary capacity. Her creditors have no remedy against her if she has no separate estate ; and even where she has separate property it may be held in trust for her and she may be " restrained from anticipation," in which case it cannot be touched, even by a judgment, so long as she is a married woman. Where the " restraint on anticipation " in a settlement has been made by the woman herself, it has no validity, however, against her ante-nuptial debts. By " restraint on anticipation " is meant where property is settled on a married woman without power of anticipation of the income or alienation of the capital, thus preventing the disposition of the property in favour of her husband or of any other person.

A married woman can now contract with her husband in respect of her separate estate ; but she could not formerly be made bankrupt unless she was trading apart from her husband. Now, however, by the Bankruptcy Act, 1914, a married woman who is a trader can be made a bankrupt even if not trading apart from her husband.

It was decided in *Paquin* v. *Beauclerk* (1906) that a married woman who contracts as agent is not liable to answer out of her separate estate, and it is immaterial whether the other party did or did not know that she was contracting as agent and was a married woman. The wife has an implied authority to bind her husband for necessaries, and for necessaries only, for herself

and her household, but this is liable to be rebutted by evidence showing that she is already well supplied. This and cognate matters will be more properly considered under the heading of AGENCY (*r*).

All these peculiar privileges cease on her becoming a widow, except that a judgment limited to her separate property does not, on the death of the husband, become a judgment upon which she is personally liable.

The husband is not responsible for the debts contracted by his wife before marriage.

PERSONS OF UNSOUND MIND AND DRUNKEN PERSONS

Contracts (except for necessaries at a fair price) made with lunatics or persons under the influence of drink are voidable if the other party is, at the time of the contract, aware of the lunacy or drunkenness; otherwise they are binding. In the case of *Imperial Loan Co.* v. *Stone* (1892), *A* had signed a Promissory Note as surety and he was sued thereon by plaintiffs. In defence he pleaded that he was so insane at the time he signed the note as to be incapable of understanding the nature of the transaction, and the jury found that such in fact was the case. The question then arose as to whether it was necessary for the defendant to show that the plaintiffs knew of the state of his mind at the time, and it was held that he must do so, it being laid down that "a defendant who seeks to avoid a contract on the ground of his insanity must plead and prove not merely his incapacity, but also the plaintiff's knowledge of that fact, and unless he proves these two things he cannot succeed." In order, therefore, to repudiate such contracts, the lunatic or drunken person must show, not only that he was incapable of understanding what he was doing, but also that this condition was known to the other party at the time of entering into the contract. Such a contract may, however, be ratified when the person incapacitated recovers; but persons found lunatic by inquisition, i.e., on enquiry at the direction of the court, cannot, even during a lucid interval, enter into binding contracts.

ALIENS

Under the provisions of the Naturalisation Act, 1870, certain of which are re-enacted by the British Nationality and Status of Aliens Act, 1914, there is no difference in capacity between a natural-born or a naturalized British subject and an *alien*, except that an alien may not acquire any property in a British

(*r*) See *post*, p. 72.

ship. An *alien enemy* is, however, incapable of contracting, and his power to sue or to exercise rights in relation to property here is suspended during the continuance of a state of war. An " alien enemy " for the purposes of commercial relations is *prima facie* the subject of a State with which this country is at war, but there are very many exceptions, e.g., a subject of the enemy State may be residing here and trading under licence of the Crown, in which case he is not deemed an alien enemy. On the other hand, a British subject may, by residence or by adhering to the enemy State, render himself liable to be regarded as an alien enemy.

It was decided in *Hugh Stevenson and Sons* v. *Aktien-Gesellschaft für Cartonnagen Industrie* (1918) that a partnership between an Englishman and an alien is dissolved on the outbreak of war between this country and the country of which the alien is a national ; but, if the alien partner's share of capital is continued to be used by the English partner in carrying on the business, the alien is not debarred from his rights under Section 42 of the Partnership Act, but he cannot sue thereon until after the conclusion of peace. But it was held in *Porter* v. *Freudenberg* (1915) and in *Robson* v. *Premier Oil and Pipe Line Co.* (1915) that an alien enemy may be sued, and that if he is so sued he may defend himself.

Foreign Sovereigns and States may enter into contracts with British subjects, but they cannot be sued thereon unless they consent. Under the Diplomatic Privileges Act, 1708, the same privilege applies to Ambassadors and their staffs.

CORPORATIONS AND COMPANIES

A corporation is a legal entity which enjoys a distinctive name and perpetual succession, and usually a common seal. It may be either a corporation sole, i.e., one person, as for instance the parson of a parish, or it may be a corporation aggregate, i.e., composed of many persons. The latter may be created by Act of Parliament, or by a Charter of Incorporation, or Letters Patent granted by the Crown, or by incorporation under the Companies Acts.

A corporation aggregate is an artificial person and its capacity to contract is governed by the Statute, Charter or Memorandum of Association by which, and the purposes for which, it is constituted. But some powers are implied, e.g., unless expressly restricted, a trading corporation has implied power to borrow money for the carrying-on of its business. Any exercise of powers in excess of those laid down in the creating instrument is termed *ultra vires* (that is, beyond the powers), and any

contracts thus entered into are invalid. Thus, in *Ashbury Railway Carriage Co.* v. *Riche* (1875), the Memorandum of Association gave the company power to make and sell railway carriages, and the Articles of Association conferred express power to extend the company's business beyond the scope of the Memorandum by special resolution. The directors purchased a railway concession in Belgium and the company passed a special resolution to ratify the transaction. It was held that the purchase was bad. LORD CAIRNS said, "If every shareholder had been in the room and . . . had said 'that is a contract which we authorize the directors to make,' it would be void. The shareholders would thereby, by unanimous consent, have been attempting to do the very thing which by the Act of Parliament they were prohibited from doing."

When Contracts under Seal necessary.—A corporation is supposed to make all contracts under seal, or through an agent so appointed, but there is an increasing tendency to regard contracts not under seal as valid if made in the ordinary course of business. There are certain classes of contracts which are now recognized as not requiring to be under seal. They are those of extreme urgency or of small importance, or of frequent occurrence.

There is an important provision in the Public Health Act, 1875, to the effect that the contracts of Urban Authorities must be under seal if over £50 in value. This is rigidly enforced, but only applies to those contracts made under the powers and for the purposes of the Act in question. Apart from this statutory rule, however, where a corporation makes contracts which are not governed by the Public Health Act and the work pertains to that for which the corporation has been created, the absence of a seal, even in important agreements, will not prevent a person who has done his part from successfully claiming the agreed price when once his work has been accepted by the corporation. But there is no such remedy for an *executory* contract, for the claim rests on the fact that the corporation has accepted a benefit and therefore ought to pay for it.

Companies governed by the Companies (Consolidation) Act, 1908, may, under Section 76 (1), only contract as authorized by the Articles of Association. The section provides that in the absence of any special provisions in the regulations that limit the powers—

(i) Any contract which if made between private persons would be by law required to be in writing, and under seal, may be made on behalf of the company, in writing under the common seal of the company, and may in the same manner be varied or discharged.

(ii) Any contract which if made between private persons would be

by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(iii) Any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

CONVICTS AND BANKRUPTS

Convicts are incapable of suing in an action or of making a contract, except when at large on licence. By a convict is meant a person against whom judgment of death or penal servitude has been pronounced.

Under the Bankruptcy Act, 1914, Section 155, a person who has been adjudged bankrupt and is still undischarged is not altogether incapacitated from contracting, but he must not trade under a different name from that used when he was adjudged bankrupt, without disclosing to all persons with whom he deals the name under which he was so adjudged ; and he must not obtain credit to the extent of £10 or above from any person without informing that person that he is an undischarged bankrupt. A bankrupt cannot sue or be sued upon his contracts, but actions are brought by or against the trustee of his estate.

MISCELLANEOUS

Barristers cannot sue for their fees, but solicitors may ; and under the Medical Act, 1886, Fellows of the Royal College of Physicians are prohibited by a by-law of the College from recovering at law their fees and charges ;. but all other classes of physicians and surgeons may do so. As regards fees in respect of dentistry (as distinct from supplying, e.g., a set of false teeth) a dentist cannot recover unless he is registered, and a similar rule applies to veterinary surgeons. Accountants may enter into and enforce contracts relating to their profession.

LEGALITY AND POSSIBILITY

To be enforceable, Contracts must be legal.

Illegal contracts are absolutely void, that is, those which are unlawful in their terms, or which are agreements to perform anything unlawful or in aid of an unlawful purpose, or which the courts will not enforce as they offend against public policy, or because forbidden by some statute. But there are some void

contracts which are not necessarily illegal in themselves, e.g., gaming and wagering contracts.

The court always presumes in favour of the validity of a contract, and, if there is real doubt, will incline towards supporting it rather than otherwise. But when the contract is clearly illegal, the court, as in *Scott* v. *Brown* (1892), will refuse to enforce it, even if the illegality be not specially pleaded by the defendant. If there be in an agreement an illegal stipulation which does not affect the contract as a whole, such stipulation will not necessarily avoid the whole contract. "The general rule is that where you cannot sever the legal from the illegal part, the contract is altogether void; but where you can sever them, whether the illegality be created by statute, or by the common law, you may reject the bad and retain the good." (WILLES J., in *Pickering* v. *Ilfracombe Rail Co.* (1868).)

Illegal contracts need not necessarily be criminal, although obviously an agreement to commit an offence, whether criminal or civil, would fall under the heading of illegal contracts; as also would a contract to accept or give consideration in aid of an illegal purpose, e.g., the compounding of a felony by accepting payment to refrain from prosecuting an offender; or even a contract to lend to another money to be applied to such a purpose. Similarly, contracts relating to lotteries, or with the intention of defrauding third parties, are void. Reference should be made also to *Ford* v. *Radford*, previously cited (*s*).

There are many contracts which are recognized by the *Common Law* as illegal; amongst these, as already stated (*t*), are—

(1) Contracts of an immoral nature;
(2) Agreements to commit a crime or civil wrong;
(3) Agreements for the sale of public offices;
(4) Agreements to impede justice or defraud the revenue;
(5) Trading with the enemy;
(6) Marriage brokage contracts;
(7) Contracts in undue restraint of trade;
(8) Maintenance and Champerty.

Maintenance, as defined in CHITTY'S *Contracts*, is "When one officiously intermeddles in a suit depending in any court, which no way belongs to him, by maintaining or assisting either party with money or otherwise, to prosecute or defend it. *Champerty* is a bargain by some person, with a plaintiff or defendant, to divide the land or other matter sued for between them, if they prevail at law; whereupon that person, who is called the

(*s*) See *ante*, p. 24.
(*t*) See *ante*, p. 23.

Champertee, agrees to carry on the party's suit at his own expense." But maintenance is lawful where the person maintaining has a legal interest in the subject matter of the action, and a charitable supply of funds is not unlawful; and taking an interest in litigation as security is not champerty.

Contracts opposed to Public Policy.

The inclination, referred to above, against the upsetting of a contract, has recently been more strongly marked in relation to contracts alleged to be contrary to public policy, that is, those which are deemed to be opposed to the public interest and which, therefore, it is impolitic to enforce. A judge has not unfettered discretion in declaring a contract opposed to public policy. "Judges are more to be trusted as interpreters of the law than as expounders of what is called public policy." (CAVE J. in *In re Mirams* (1891).) "It is always an unsafe and treacherous ground of legal decision." (DAVEY L.J. in *Janson* v. *Driefontein Consolidated Mines Limited* (1902).) "You have this paramount policy to consider—that you are not lightly to interfere with the freedom of contract." (JESSEL M.R. in *Printing and Numerical Co.* v. *Sampson* (1875).) Such contracts include—

(1) Agreements to trade with alien enemies, without a licence from the Crown.
(2) Contracts in undue restraint of trade.
(3) Those which stipulate for the payment of penalties.

Under this last head would fall contracts wherein it is agreed that in the event of a breach of the conditions, a stated sum of money is to be paid as "liquidated damages." If the court is of opinion that such sum is more than the amount of damage suffered, and is in fact a penalty, it will grant relief.

Contracts in Restraint of Trade.

The courts view with great suspicion a contract in restraint of trade, that is, one restricting a person from the full exercise of his trade or profession. At one time agreements in general restraint of trade were held to be void, but by degrees it has been established that agreements in partial restraint may be allowed, and in certain cases even a restraint unlimited as to area or time will be allowed provided the restraint is reasonably necessary and not contrary to the public interest. In the case of *Nordenfelt* v. *Maxim Nordenfelt Gun and Ammunition Co.* (1894), the patentee of guns and ammunition for war purposes transferred his patents and his business to a company and

covenanted that he would not engage, except on behalf of the company, in the business of manufacturing guns or ammunition for a period of twenty-five years. It was held that the restriction was valid, as although this restraint was unlimited as to space, yet having regard to the nature of the business and the limited number of likely customers, it was not wider than was necessary for the protection of the company, nor was it injurious to the public interest. But in an unreported case in 1920 it was held that a restriction not to act as a meat agent in the United Kingdom was too wide. The territorial limits of partial restraint are now usually allowed a wider application than formerly, owing to the easier and more speedy means of communication. Many business firms require that an employee shall covenant that, on leaving their service, he will not carry on a similar business within a certain area for a fixed period. But in such a case it has been decided, if the employer should repudiate the contract by the wrongful dismissal of the employee, as in *General Billposting Co.* v. *Atkinson* (1908), that the restrictive clause is not binding; and it should be noted that the *compulsory* winding up of a joint stock company is equivalent to wrongful dismissal. In *Measures Brothers Limited* v. *Measures* (1910) *A* agreed to act as director of the company for seven years and not to engage in any competing business for seven years after ceasing to hold office as director. The company was ordered to be wound up, and it was held that the winding-up order operated as a wrongful dismissal of *A* and he was relieved of his agreement not to compete with the company.

An interesting case recently decided was *Bowler and Blake* v. *Lovegrove* (1921), where the defendant had covenanted that he would not for one year after leaving plaintiff carry on or be interested in any way in the business of auctioneer and estate agent in Portsmouth borough or Gosport town. He became an estate agent only, within a year and within the area prescribed. It was held that as estate agent there was no breach of a covenant not to carry on as auctioneer and estate agent, and that the clause was *prima facie* invalid as being a covenant between employer and employee and that there were no special circumstances which made the covenant reasonable.

A condition of this nature is almost invariably included in a sale of the goodwill of a business. A contract in restraint of trade is regarded as part of the goodwill of a business and, in the absence of a contrary provision, is assignable, the purchaser being able to enforce the contract in his own name. Such agreements will be enforced unless considered, under all the circumstances, to be unreasonable and harsh. They may have terms easily separable, and if so, some may be good and some

may be bad. Contracts of this kind will be enforced much more readily by the Courts when made between vendor and purchaser of a business than when made between employer and employee, because in the former case the parties to the contract are more at arm's length than in the latter.

In *Elliman* v. *Carrington* (1901), the plaintiffs sold embrocation to defendants under a contract whereby defendants agreed not to sell the embrocation at less than a stated price and, further, that they would enter into similar agreements with any retail traders whom they might supply ; but the defendants did not procure such agreement from the retail traders. It was held that plaintiffs had good cause of action for breach of the contract, as it was not in restraint of trade.

It should be noted that a contract in restraint of trade, even though under seal, requires consideration to support it.

Statutory Provisions.

Many contracts are invalid because forbidden by various Acts of Parliament. There appears to be some doubt as to what is the rule determining whether certain acts are forbidden by statute, and it was held in *Johnson* v. *Hudson* (1809) that the act is not forbidden if a penalty is inflicted merely for revenue purposes, but that if the act is forbidden for the protection of the public the contract would be illegal.

The following contracts are void by statute—

Truck Acts, 1831 and 1887. All those offending against the Truck Acts, by which it is forbidden to pay the wages of workmen otherwise than in money.

Sunday Observance Act, 1677. Those opposed to the almost obsolete provisions of the "Lord's Day Act," which forbid trading on Sunday in the course of the contractor's *ordinary* calling. As a rule, contracts made in the course of such trade are unenforceable. But it should be noted that, by the Bills of Exchange Act, 1882, Section 13, bills of exchange, promissory notes, and cheques dated on a Sunday are good.

Gaming and Wagering Contracts.—By the Gaming Act, 1845, Section 18—

> "All contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void ; and no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made."

"The essence of gaming and wagering is that one party is

to win and the other to lose upon a future event, which at the time of the contract is of an uncertain nature—that is to say, if the event turns out one way *A* will lose, but if it turns out the other way he will win." (COTTON L.J. in *Thacker* v. *Hardy* (1879).)

Further, under the Gaming Act, 1892—

> "Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by the Gaming Act, 1845, or to pay any sum of money by way of commission, fee, reward, or otherwise in respect of any such contract, or of any service in relation thereto, or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money."

The combined effect of these two enactments is that while it is not an offence to make a wager, no such contract will be enforced by the courts ; and, if the loser does not pay, the amount cannot be recovered at law. An agent employed to make bets cannot recover money paid in respect of a loss : but, if he has received money for bets made by him on behalf of his principal, he cannot retain it, as was decided in the case of *De Mattos* v. *Benjamin* (1894).

If negotiable instruments have been given in payment of bets or gaming, or for money knowingly lent for such a purpose, they are not void, but are deemed to have been given for illegal consideration and are not enforceable as between the parties. By the recent judgment of the House of Lords in *Sutters* v. *Briggs* (1921), confirming the decision in *Dey* v. *Mayo* (1920), it was ruled that if a cheque has been given for losses incurred at betting, the amount so paid may be recovered by the loser even though the cheque has been honoured when in the hands of a third party, as " Section 2 of the Gaming Act, 1835, was designed to preserve the right of the loser of a bet to recover the amount even when it was paid by means of a cheque, thenceforth made enforceable in the hands of a third party." It is thought that the Act of 1835 was by an oversight not repealed by the Act of 1845 ; and it is probable that the effect of this far-reaching decision will shortly be nullified by legislation. It will be noted that the Act of 1835 referred to in the judgment applies only to negotiable instruments, so that if a loser of a bet pays in cash he cannot recover the amount paid. A holder in due course may sue on a negotiable instrument and the giver of the instrument will be entitled to be indemnified by the payee.

Leeman's Act.—Under the provisions of the Act known as Leeman's Act (Banking Companies Shares Act, 1867), the sale of shares in a joint stock banking company is void unless the contract sets out in writing the numbers of the shares as stated

in the register of the company. It has been the custom of the London Stock Exchange to disregard this provision (*u*).

Moneylenders' Act, 1900.—Under this Act a transaction must not be carried out elsewhere than at the registered address of the moneylender, otherwise, as decided in *Cornelius* v. *Phillips* (1918), it is illegal and void. If the moneylender has not registered his name under the Act, or if he uses some name other than his registered name, contracts made under such circumstances are illegal. In such cases repayment of the money lent cannot be enforced. But the provisions of this Act are considered more fully hereinafter (*v*).

Registration of Business Names Act, 1916.—By Section 8 of this Act a person cannot enforce a contract made by him or on his behalf while he had not complied with the requirements of the Act; but it was held in the case of *Daniel* v. *Rogers* (1918) that the title to property of which he had acquired complete possession could not be affected.

Sale of Bread, Coal, etc.—Certain contracts in respect of the sale of game, intoxicating liquors, bread and coal are illegal unless carried out in accordance with particular regulations.

It was held in *Taylor* v. *Bowers* (1876) that a person who has paid money under an illegal contract can recover it, providing the contract has not been carried out; but in *Kearley* v. *Thomson* (1890) it was held that he cannot recover if it has been carried out even partly. This rule does not apply, however, to marriage brokage contracts, and in *Hermann* v. *Charlesworth* (1905) money paid was held to be recoverable even when the marriage had taken place. Where an instrument is illegal it cannot be afterwards confirmed, the legal maxim being *Quod ab initio non valet in tractu temporis non convalescit.* (What is bad at the commencement cannot be made good by passage of time.)

Contracts must not be impossible of Performance.

Contracts which are, at the time of making, impossible of performance are void for want of consideration, e.g., to perform a thing which is obviously impossible either legally or by the law of nature, such as to fly to the moon. There are, in all, three kinds of impossibility—

(1) *Legal Impossibility*—acts forbidden by the law of the land, e.g., to enter into a wagering policy of insurance.

(*u*) See *post*, p. 234.
(*v*) See *post*, p. 64.

(2) *Absolute Impossibility*—as exemplified above, to do an act physically incapable of performance.

(3) *Actual Impossibility*—where a contract has been entered into regarding subject matter which, without the knowledge of either party, is non-existent at the time of the contract being made. This is more properly considered in the following section under the heading of MISTAKE.

There are other contracts which, while possible of performance at the time of being entered into, subsequently become impossible. Such contracts will be more fully considered under the heading of IMPOSSIBILITY (*w*).

MISTAKE, MISREPRESENTATION, AND FRAUD

Mistake in Contracts.

Where mistake affects a contract it makes it void, and any money paid under the contract can be recovered. The mistake may be made by one or both of the parties. If it is clearly shown that there has been a misapprehension on one side, the mistake will be allowed to nullify the contract only in certain strictly limited cases ; but if the misapprehension is on both sides the contract will certainly be void, and any monies paid will be recoverable. As a rule, however, the fact that one of the parties was labouring under a misapprehension is not sufficient to release him from his agreement, as was decided in *Smith* v. *Hughes* (1871). It is obvious that, if such were the case, most people would endeavour to obtain release from contracts which had turned out in the result contrary to their expectations. The cases where mistake by one party would affect a contract are :—

(1) *Mistake as to parties*—dealing with one person thinking him to be some one else. The lack of certainty invalidates the agreement.

(2) *Mistake by one party as to the intention of the other, known to that other*—the law will not allow a man to make or accept a promise which he knows the other party understands in a different sense from that which is in his own mind. There is, however, no need to correct a wrong impression—though obvious—as to the goods themselves, so long as there is no deceit in connection with the promise made.

The general rule is that if a person, whatever his intention, so conducts himself that another is reasonably led to believe

(*w*) See *post*, p. 69.

that he is consenting to the terms of a contract, then he will be bound by such contract. The few cases of mistake are exceptions to this rule. Generally, a mistake invalidating a contract is due to the act of a third party or the dishonesty of one of the parties ; the cases of genuine mutual mistake are hard to find, but they usually take the following forms :—

(3) *Mistake as to the nature or existence of the contract*—for instance, an illiterate or infirm man signing a Bill of Exchange on an assurance that he was witnessing another signature. The mind of the person signing would not accompany the signature.

(4) *Mistake as to subject matter*—either as to its existence or identity.

The meaning of " mistake " as considered here is not the popular meaning of the term. It must be some *fact*, clearly established, which shows that the two parties were not in agreement in the same sense and on the same subject matter, that is, they were not *ad idem*. For instance, in the case of *Couturier* v. *Hastie* (1850), the two parties entered into a contract regarding a cargo which was supposed to be on the sea. It subsequently transpired that owing to the sinking of the ship that carried it, it had ceased to exist at the time of entering into the contract, and it was held that the contract was void. In the case of *Raffles* v. *Wichelhaus* (1864), the two parties bargained as to a cargo to arrive " ex *Peerless* from Bombay." It transpired that there were two ships answering to this description ; *A* intended one and *B* the other, and it was held there was no contract. No ignorance of the *law* will be accepted as a mistake entitling a party to rescission of the contract—the maxim being *Ignorantia juris neminem excusat* (ignorance of the law excuses nobody)—so that no money can be recovered that has been paid in ignorance of the law ; although, as held in *Kitchin* v. *Hawkins* (1867), if paid only under a mistake of *fact* it may be. But this rule will not be given effect to if it can be shown that there has been an absence of *bona fides* on the part of the other side. Thus, in *Ward and Co.* v. *Wallis* (1900), *B* was sued by *A* for work and labour done. By mistake *A* credited *B* with a sum as paid on account and claimed the balance due, *B* being aware of *A*'s mistake. *B* thereupon paid the amount claimed and obtained a receipt for the whole amount due. Subsequently, on discovering the mistake, *A* brought another action to recover the amount credited in error as money had and received to his use. It was held that although the receipt had been given under compulsion of legal process, *B* could not rely on it as a defence, since he had not acted *bona fide*.

Where a party has made a mistake in his mode of expression

and has said or written something which, to the knowledge of the other party to the contract, is other than is really intended, such other party is not allowed to take advantage of the mistake, and if he attempts to enforce such a contract while it is still executory, the remedy is usually rescission : but the court may offer the one party the option of taking what the other intended to give and, if the offer be accepted, may rectify the agreement.

Misrepresentation in Contracts.

Mistake must not be confused with Misrepresentation. A representation is a statement made before or at the making of the contract by one party to the other.

It may or may not ultimately become embodied in the contract, but if it does become a term, it is then either a *warranty* or a *condition* according to whether it is a promise subsidiary to the main agreement or an undertaking vital to the existence of the contract.

There may, therefore, be misrepresentations :—

(1) In the negotiations prior to the contract, which have led the party to whom they have been made to enter into the contract ;

(2) As to facts which, while not vital to the contract, have been incorporated therein by the parties ;

(3) As to the main conditions on which the contract rests.

These misrepresentations must again be classified as :—

(*a*) Innocent ;

(*b*) Fraudulent.

In the case of (2) above, the remedy is damages for breach of contract, and, in (3) damages and rescission ; while, if fraud is present, the injured party can bring an action *ex delicto* for deceit.

The question of breach is sufficiently dealt with under " Breach," in the section " Discharge of a Contract."

We have here to consider misrepresentations made in the course of arriving at an agreement ; and it is necessary to point out that :—

(1) To affect the contract, the representation must be a statement of fact, not of law ;

(2) It must have led the other party to enter into the contract—i.e., it must be material to the contract ;

(3) If it is a statement of opinion, and it is true as such, it is not a misrepresentation even if the opinion is mistaken and is not justified by the facts. If a man holds a mistaken opinion and says he holds that opinion, he is not misrepresenting his opinion.

Innocent Misrepresentation does not, as a rule, entitle the

injured party to damages, yet he can obtain rescission if he apply within a reasonable time and provided the misrepresentation is of a substantial and material fact. But an executed contract as, for instance, for a lease or for sale of a chose in action cannot be rescinded except where, as in *Armstrong* v. *Jackson* (1917), some fiduciary relationship exists between the parties.

Although the injured party cannot recover damages, he may claim to be restored to the position he occupied before entering into the contract, but where a change of position has resulted and complete restitution cannot be made, rescission may be refused. In *Lagunas Nitrate Co.* v. *Lagunas Syndicate* (1899), the plaintiffs had worked certain nitrate deposits which they had purchased from defendants; they afterwards claimed to rescind the contract, but rescission was refused owing to the change of position. There are some exceptions to the rule that an injured party cannot obtain damages on the ground of innocent misrepresentation, e.g., an agent may be sued for breach of warranty of authority if he innocently represents himself as having authority from a principal which he does not actually possess, provided the other party is not aware of the fact and is injured by the misrepresentation; and directors of companies may be liable for untrue statements in a prospectus. This will be considered more fully hereinafter (*x*).

Fraud in Contracts.

Fraudulent Misrepresentation is a statement made with the knowledge that it is false, or without belief in its truth, or recklessly without caring whether it be true or false. The important case of *Derry* v. *Peek* (1889) settled the law on the matter of fraud. The directors of a tramway company had issued a prospectus stating that the company had the right to use steam power in the working of their carriages. As a matter of fact, the consent of the Board of Trade was necessary before steam could be used, and such permission was not given, although the directors honestly thought they would obtain it. The House of Lords held that, as the statement in the prospectus had been made honestly in the belief that it was true, there was no fraud. The effect of this decision has been nullified, so far as concerns directors and promoters of companies, by the Directors' Liability Act, 1890, which is now repealed and its provisions re-enacted by the Companies (Consolidation) Act, 1908, whereby if an action for fraud is brought against directors, in respect of statements contained in a prospectus, the onus is on them to prove that they had *reasonable grounds* for believing the state-

(*x*) See *post*, p. 277.

ments to be true, or that the statements were the report of an expert believed by them on reasonable grounds to be competent, or that the statements were an exact copy of an official document; but this is fully considered hereinafter, under the heading of LIMITED LIABILITY COMPANIES (*y*). The law as laid down in *Derry* v. *Peek* obtains still as regards other persons, so that a false statement honestly made, but without reasonable grounds for belief in its truth, is not fraud; and, in an action for deceit, the plaintiff must prove actual dishonesty. The fraudulent statement must be one of fact and not of law, it must have been made by one of the parties, and it must have been the reason for entering into the contract. But, although the statement must have been made by one of the parties, it need not be made *directly* to the other party. If the statement is made to the public generally, anyone who acts upon it can sue. In the case of *Andrews* v. *Mockford* (1896), where a prospectus was issued not only to attract subscriptions but also to induce persons to buy shares in the open market, it was held that the office of the prospectus was not exhausted on the allotment of shares, and anyone who, having received a prospectus and relied on its contents, purchased shares in the open market had a cause of action for fraudulent misrepresentation against the promoters. But in *Peek* v. *Gurney* (1873), where it was shown that the prospectus was intended to be relied upon only by the original applicants for shares, it was held that no action would lie in similar circumstances.

Representation must be intentional.—The representation must be intended to be acted upon by the party to whom it is made, but the representation once made relieves the party from investigation, even if the opportunity is afforded, unless there be circumstances of suspicion which would make it his duty to inquire. In the leading case of *Langridge* v. *Levy* (1838), the defendant sold a gun to a customer for his own use and that of his sons. The gun burst and injured the plaintiff, one of the sons, who brought an action for fraud in describing the gun. The jury found fraud, and it was held that plaintiff could recover as the gun was intended, to the knowledge of the defendant, for the use of the plaintiff as well as of the actual purchaser; in other words, the misrepresentation was intended to be acted upon by the plaintiff. As laid down by WOOD V. C. in *Barry* v. *Croskey* (1861): "Every man must be held responsible for the consequences of a false representation made by him to another upon which a third person acts . . . provided it appear that such false representation was made with the direct intent that it should be acted upon by such third person in the manner that occasions

(*y*) See *post*, p. 255.

the injury and loss." JESSEL M. R. in *Redgrave* v. *Hurd* (1881) said that if the representation is material, it is an inference of law that it induced the other party to enter into the contract; but this was opposed by LORD BLACKBURN, in *Smith* v. *Chadwick* (1882), who thought the question to be one of fact.

Obviously, the other party must be deceived by the misrepresentation, or he has not been misled by it; and, even if he were deceived by a misrepresentation, but did not rely on it when entering into the contract, it was held in *Smith* v. *Chadwick*, cited above, that there is no remedy on the ground of fraud. In *Horsfall* v. *Thomas* (1862), *A* bought an article, but did not examine it. It was rendered valueless by a flaw that had been painted over with the intention of concealing it. It was held that, as *A* had not examined the article, the concealment could not have affected his mind and no action for deceit could be maintained.

As laid down in *Derry* v. *Peek*, referred to above, "Fraud without damage or damage without fraud" does not give rise to an action for deceit. Unless actual damage has been suffered, therefore, no action will lie on account of fraud.

Remedies for Fraudulent Misrepresentation—

(1) The right to rescind the contract and, if necessary, claim damages. But, if rescission is claimed, it must be claimed within a reasonable time of the discovery of the fraud, and the contract remains valid until rescinded.
(2) To defend an action and obtain a declaration that the contract is void.
(3) To abide by the contract and bring an action for damages.

It should be noted that by Lord Tenterden's Act no action will lie on a representation, though false and fraudulent, as to character, conduct, credit, ability, trade or dealings of any person made to the intent or purpose of enabling such person to obtain credit, money or goods, unless the representation be made in writing signed by the party to be charged therewith.

As a rule, it is not fraudulent to maintain silence on some matter which, if known to the other party, might cause him to refrain from contracting, providing such non-disclosure does not have the effect of making false that which is stated. "Mere omission, even though such as would give reason for setting aside a contract, is not, in my opinion, if it does not make the substantive statements false, a sufficient ground for maintaining an action for deceit"—COTTON L. J. in *Arkwright* v. *Newbold* (1881). "There must, in my opinion, be some active misstatement of fact, or, at all events, such a partial and fragmentary statement of fact as that the withholding of that which is not

stated makes that which is stated absolutely false "—Lord Cairns in *Peek* v. *Gurney* (1873). There are, however, exceptions to this rule in the group of contracts which are known as contracts *uberrimæ fidei* (that is, of the utmost good faith). Unless each party to these contracts has disclosed every material fact of which he had knowledge at the time of making the contract, then the contract can be avoided by the party misled by the non-disclosure. Such contracts include all kinds of contracts of insurance ; suretyship ; contracts to take shares in companies ; partnership ; and contracts for the sale of land.

Undue Influence and Duress.

Closely allied to fraud is coercion. Where a contract has been entered into under coercion, either through undue influence being exerted, or by duress, the law assumes that consent has not freely been given, and the contract may be avoided by the party coerced ; but, if ratified when the effects of the coercion have been entirely removed, the ratification will make the contract good. " Whenever from natural weakness of intellect or from fear—whether reasonably entertained or not—either party is in a state of mental incompetence to resist pressure improperly brought to bear, there is no more consent than in the case of a person of stronger intellect and more robust courage yielding to a more serious danger "—Butt J. in *Scott* v. *Sebright* (1887).

Undue influence is the improper exercise of any power possessed over the mind of one of the contracting parties ; *duress* is actual or threatened violence, or a restraint of liberty, or an abuse of legal proceedings if of a criminal nature. The threatened violence must be of such a kind as to affect a reasonable man, and must relate to himself or the person of his wife or children. Undue influence is presumed, unless evidence to the contrary is adduced, in all cases where such a relationship exists between the parties as to render it probable that consent was not freely given, e.g., trustee and *cestui que trust* (the person benefiting under the trust), solicitor and client, and guardian and ward ; but it was decided in *Howes* v. *Bishop* (1909) that this is not presumed in the case of husband and wife ; in other cases it depends on the facts, as also does the question as to whether the coercion amounts to duress.

RIGHTS AND OBLIGATIONS UNDER A CONTRACT

Only those who are parties to the contract may, as a rule, enjoy the rights and be subject to the obligations to which

every contract gives rise, that is, those parties between whom is what is known as " privity of contract." Thus it was decided in *Eley* v. *Positive Government Security Life Assurance Co.* (1876), to the effect that if *A* agrees with *B* that he shall do something for the advantage of *C*, *C* cannot enforce the obligation against *B*, for he is not a party to the contract ; similarly he could not be bound by any agreement between *A* and *B* that he should do something.

But, although generally speaking a third party has no rights and no obligations under a contract, yet he may have a duty—that is, the duty of not interfering with the carrying-out of the obligations under the contract, and any interference will lay him open to liability unless he can justify it.

In the case of *Lumley* v. *Gye* (1853) the plaintiff had engaged a singer to sing at his theatre for a certain time under agreement that she should not during that period sing elsewhere. The defendant, who was aware of the facts, with the malicious intention of injuring the plaintiff, enticed and procured the singer to break her contract. It was held that plaintiff had a good cause of action. Providing the act is done knowingly, good faith and the absence of ill-will are not in themselves sufficient excuse for the interference of a third party, as was decided in *Reed* v. *Friendly Society of Stonemasons* (1902) ; and it is immaterial whether the contract is between master and servant or any other form of contract. The justification must exist in fact and must not be founded on a *supposed* right ; but any alleged justification will be dealt with on its merits, as no definition can be given of what would constitute justification. Where a person induces another not to employ a certain person, or to discharge an employee in a way in which he is legally entitled to discharge him, no action will lie, as in the case of *Allen* v. *Flood*, cited above. (*z*) But if a person prevents another from obtaining or continuing employment by threats or influence, which he has the power of enforcing against the employer, and his intention is to compel that other person to pay a debt or is any similar object not directly connected with the act, then an action will lie, as in *Giblan* v. *National Amalgamated Labourers Union* (1903). The legislature has, however, stepped in and defined certain cases wherein interference with contracts is not unlawful, and the Trades Disputes Act, 1906, has laid down that an act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade or business or employment of some other person or with the right of some other

(*z*) See *ante*, p. 4.

person to dispose of his capital or labour as he will; but such act must not be accompanied by threats or violence; and no action will lie against a trade union for any tort alleged to have been committed by or on behalf of the trade union, although the actual tort feasor may be liable.

An agent carrying out an agreement for his principal is not an exception to the rule that a third party has no rights or obligations under a contract; for the agent is, in effect, the principal. The legal maxim is *Qui facit per alium facit per se* (who acts through another acts himself)—the agent really steps into the shoes of the principal for the purposes of the contract.

CONSTRUCTION OF CONTRACTS

The construction of a contract will be placed upon it by the Courts, but there are certain general rules of construction which must be observed, and these apply equally to verbal and to written contracts (*a*)—

(1) The construction must be reasonable, according to the intention of the parties, liberal and favourable.
(2) Words must be construed in their plain ordinary and popular sense, except those that have by custom acquired a peculiar meaning from use in a certain locality or trade, or where the context shows that some other meaning was intended.
(3) Construction shall be put upon the entire instrument, so that one part may assist another.
(4) The words of a contract must be construed most strongly against the party who uses them.
(5) Unless expressly excluded, notice will be taken of commercial and local customs.
(6) A contract must be construed according to the law of the country where made, except when the parties contracted with a view to a different country.
(7) Parol evidence is not admissible to vary or contradict a written instrument, except in the case of a latent, but not of a patent, ambiguity.

In the case of a verbal contract, what was the intention of the parties as to the rights and obligations arising out of it must be gathered from the circumstances. If the contract is in writing, the rights and obligations will be as set out therein, and the terms *cannot be varied by oral evidence except*—

(*a*) CHITTY on *Contracts*, pp. 94–128.

(*a*) In cases where terms are proved supplementary or collateral to so much of the agreement as is in writing.
(*b*) In cases where explanation of the terms of the contract is required, i.e., in cases of latent as opposed to patent ambiguities.
(*c*) To introduce usages into the contract.
(*d*) To show fraud, duress or mistake. (*b*)

By *latent ambiguity* is meant a word or phrase which on the face of it seems perfectly clear, but which can be shown to bear a different interpretation.

The legal maxim *ut res magis valeat quam pereat* (it is better that the matter should be favoured than that it should perish) is of importance in connection with construction, so that the Courts lean in favour of a contract whenever possible.

The Judicature Act, 1873, provided that stipulations as to time should receive in all courts the same construction and effect as they formerly received in equity ; but this provision has been held not to apply to mercantile contracts, which were always under the cognizance of the common law courts. In such contracts, therefore, the general rule is that stipulations as to time are essential conditions. It is provided, however, by Section 10 of the Sale of Goods Act, 1893, that stipulations as to time of payment shall not be deemed essential conditions unless the terms of the contract show a contrary intention clearly expressed.

FOREIGN LAW

Often a dispute arises as to what law is to govern or be applied to a particular contract ; where, for instance, a contract is made in one country with a view to its being performed, wholly or partly, in another. The point that has to be considered in such circumstances is " What was the intention of the parties ? " As a rule, no doubt, the intention is expressed in the contract itself, so that no question arises. Failing this, however, it has to be settled by looking for the presumed intention of the parties.

Law governing Foreign Contracts.—Foreign Law includes all law other than English, e.g., Scotch, Irish, French, etc. In the case of *Hamlyn & Co.* v. *Talisker Distillery* (1894), a contract was made in England by parties domiciled in England and Scotland respectively, but the terms were mainly to be performed in Scotland. A dispute arose as to the law which should govern, and the House of Lords decided that the parties contemplated

(*b*) ANSON'S *Contracts*, p. 307.

that the contract should be interpreted according to English Law as it contained a clause "Should any dispute arise out of this contract the same to be settled by two members of the London Corn Exchange or their umpire in the usual way." Such wording was regarded as clearly showing the intention of the parties. Should no contrary intention appear, the general rule is that the contract will be construed according to the *lex loci contractus* (that is, the law of the country where the contract is made), as in the case of *South African Breweries, Limited*, v. *King* (1900), where by an agreement in writing, executed in Johannesburg, in what was then the South African Republic, and made between a company having its registered office in London but carrying on business in South Africa, and a British subject resident at Johannesburg, the latter agreed to serve the company in South Africa and provision was made for his residence in Johannesburg. The agreement was in the English language and in English form. It was held that the rights of the parties ought to be governed by the law of the South African Republic. But many material facts have to be taken into consideration besides the place where the contract is made, e.g., the place of performance has a great bearing, the residence of the parties, the form of the contract, the subject matter, and so on. The *capacity* to contract is governed by the law of the domicil; and as regards the *proceedings* to enforce the contract, the *lex loci fori* governs (that is, the law of the country where the action is brought). Foreign law is not judicially noticed by the English Courts, and must be proved. There are special rules applicable to contracts of affreightment, which will be considered hereinafter (*c*), and as to foreign Bills of Exchange.

Construction of Foreign Contracts.—If a contract contains a stipulation which, while valid by the law of one country, is unenforceable here, that would be a strong presumption that the contract was intended to be construed according to the law of the country where that stipulation was valid; but it is only a presumption and may be rebutted. If the English Courts decided that the contract which contains such a stipulation, unenforceable here, should be governed by the law of the foreign country, that stipulation will, as a rule, be enforced; but it will not be so if it is opposed to some essential principle of justice or morality. If a contract made abroad is not in writing, and is enforceable according to the law of the foreign country, and if it is a contract which in this country would be required to be in writing by reason of the provisions of the Statute of Frauds, no action can be brought upon it here. The contract is good but it cannot be enforced. If a judgment is obtained in any other country

(*c*) See *post*, p. 216.

against a person resident in England who has no property in that other country, an action may be brought here on the judgment and it will, as a rule, be enforced. The English Courts will refuse to entertain any jurisdiction as to a contract concerning title to land situated abroad.

ASSIGNMENT UNDER CONTRACTS

Assignment of Rights.

At Common Law *choses in action* are not assignable. Equity, however, would allow an assignee to enforce his claims provided he brought his action in the name of the assignor, and would compel an assignor to allow his name to be used for this purpose.

The Judicature Act, 1873, simplified the procedure so far as the assignee was concerned by allowing him to sue in his own name, provided :—

(1) That the assignment is absolute and not by way of charge only.
(2) That it is in writing and signed by the assignor.
(3) That notice of the assignment is given in writing to the debtor.

Assignments under this Act are called " legal assignments."

Assignments that fall short of the above requirements are still enforceable by means of the old equity procedure, and are called " equitable assignments." There is no necessity for writing or any other special form ; they can be made in any way provided the intention to assign is clear.

It is possible for a second assignee who has no notice of the first assignment to gain priority by being the first to give notice to the debtor. This is the effect of the rule in *Dearle* v. *Hall* (1823). But an assignment can only be made " subject to the equities." For instance, if a debtor had a counter-claim or a set-off against the creditor and the creditor assigned his rights, the assignee will only be able to enforce so much of the claim as the original creditor could have done and must allow the counter-claim or set-off. Similarly, a defective title to anything purporting to be assigned continues to be defective.

An absolute assignment of debts by way of mortgage with a proviso for redemption is within the scope of the rule, whether made to secure a fixed or definite sum or a fluctuating balance of account ; and future debts may be assigned, but not an undefined portion of future debts.

Special rules govern the assignment of rights arising out of certain *choses in action*, e.g., policies of insurance, shares in joint stock companies, etc., either statutory or by the articles of

association of the company concerned; and the assignment is not effectual unless these rules be observed.

A *chose in action* is a personal right of property which can only be enforced by action, e.g., a debt, or shares in a company, as opposed to a *chose in possession*, which is a thing in actual physical possession.

Assignment of Obligations.

Except with the consent of the party to whom performance is due, there can be no assignment of obligations arising out of a contract; and, even where it takes place it is really a new contract, wherein fresh parties are substituted for those originally bound. This is called *Novation*. There are, however, certain contracts concerning land where the liabilities "run with the land," that is, they bind the owner for the time being. But contracts involving personal confidence or ability cannot be assigned by the party who had undertaken to carry out the work; for instance, an artist could not assign his undertaking to paint a picture, for the other party has probably contracted because he wished for the work of the particular artist and, naturally, would not accept the work of another. It is possible for a sale of goods to be so personal in its nature as not to be capable of assignment. A contract cannot be assigned so as to create for either party a heavier obligation than he had contracted to undertake, although as between assignor and assignee the assignment would be good. Any action would have to be brought in the name of the assignor, who would himself have to be ready to perform the personal obligation.

But, irrespective of acts of the parties, assignment of rights and obligations may take place through the death or bankruptcy of one or both of them. In the case of death, the personal representative succeeds to the position of the deceased, acquires his rights and is answerable for his liabilities to the extent of the estate. Death puts an end to contracts for personal service, such as employment of a servant or an apprentice. In the case of bankruptcy, the trustee acquires all the rights and is responsible for the liabilities of the debtor to the extent of the assets.

The distinction between Assignability and Negotiability should be clearly understood. The matter is considered hereinafter. (*d*)

DISCHARGE OF A CONTRACT

A contract may be discharged, or put an end to, by one of several methods, viz.,

(1) Agreement.
(2) Performance.

(*d*) See *post*, p. 93.

(3) Breach.
(4) Lapse of Time.
(5) Merger and Estoppel.
(6) Impossibility.
(7) Bankruptcy.

In some of these ways, other rights and liabilities may arise in place of those under the original contract; but that contract is absolutely at an end, subject to certain exceptions referred to hereafter.

Discharge of Contract by Agreement.

There are three ways by which an agreement can discharge a contract—

(*a*) By substitution of a *fresh agreement* for the original.
(*b*) By simple *agreement to rescind* before breach.
(*c*) By *release* after breach.

If the original contract was under seal, the release must be by deed; and, in other cases also, unless supported by valuable consideration, the release of a cause of action already accrued must be by deed. But, if consideration is given, a parol release is effective by way of *accord and satisfaction* (see under PERFORMANCE). Ordinarily, a release of one of several joint debtors releases all; similarly, a release by one of several creditors to one contract is good against all, but the courts will look to the intention of the parties.

A contract may contain the elements of its own discharge. For instance, it is deemed to be discharged by agreement when it is terminated by the occurrence of an event on the happening of which it had previously been agreed that all rights and liabilities thereunder should cease, e.g., in the case of an ordinary bond. For instance, *A* binds himself by deed to pay *B* £500, but if he does a certain act the bond is to be void. Upon the performance of the act the contract comes to an end—*A* and *B* are freed from one another.

In the case of bills of exchange and promissory notes no consideration is required for their cancellation.

Another method of performance may be mutually agreed to be substituted for the original one and, if carried out, it is a satisfaction of the contract. For instance, a creditor agrees to accept services for money and the services are rendered; then the contract is discharged by *accord and satisfaction*. It is possible for such a substituted agreement to be a good accord and satisfaction even if unperformed, providing the creditor had accepted the new contract in discharge of the original liability. He would, of course, have his remedy for breach of the new agreement.

Discharge of Contract by Performance.

Performance is the fulfilment of the terms of a contract according to their real effect. The parties have the right to demand performance and, on the other hand, must perform their part. Where a time limit is fixed for performance, that time must be observed. If no time is fixed, there is an implied undertaking that it shall be performed within a reasonable time.

If one party has a debt due by him to the other, he may set against it any sum due to him by that other party and so reduce or extinguish the other's claim. This is known as *set-off*. But only liquidated amounts may be set-off, and they must be debts between the same parties and in the same right. Claims that do not fall under this head may, nevertheless, as a rule be made the subject of a counter-claim on an action being brought. Liquidated amounts, and likewise "liquidated damages," are moneys which are capable of ascertainment with precision.

Payment.—One of the principal methods of performance is payment, which is the handing over of money or of a negotiable instrument. Payment may be either absolute or conditional. If legal tender or a bill be accepted in payment, the satisfaction is absolute. If, however, the bill be taken subject to its being honoured, the payment is conditional. It is not necessary for the creditor to demand payment; the debtor must, in the absence of contrary agreement, seek him out on the due date and offer to pay. If, however, it is otherwise agreed, then the debtor, on demand being made, is entitled to time to enable him to fetch the money. If the agreement is to pay a sum of money, it is not performed by a mere readiness to pay; there must be an actual offer. If the tender is to perform an act, if that tender is not accepted the contract is thereby discharged. The tender of the money does not, however, operate as a discharge of the contract; but, if it is not accepted, the debtor should pay the money into court, if proceedings are taken against him, and plead tender. Then if the creditor recovers no more than the amount tendered he has to pay the debtor's costs. The full amount must be tendered and without any condition being attached; but if a tender be made "under protest," it will reserve the right to dispute the amount. Further, the *exact* amount must be tendered, as the creditor cannot be compelled to give change.

Legal Tender.—Tender must be what is known as legal tender, that is—

(*a*) Gold coin of the realm up to any amount; silver up to forty shillings; and copper up to one shilling, under the Coinage Act, 1870.

(*b*) Bank of England Notes (in England), except by the Bank

itself, for all sums *above* £5, under the Bank of England Act, 1833.

(*c*) Treasury Notes for one pound and ten shillings to the same extent as sovereigns and half-sovereigns, by the Currency and Bank Notes Act, 1914.

Of course it is open to the creditor to waive—as is usually done—any of the rights above referred to, and the courts will infer on very slender evidence that he has done so.

How payment should be made.—Payment should be made as directed by the creditor and, if so made, the debtor is not liable if the money is lost as, for instance, if the creditor directed payment to be made to a certain bank, and after the debtor had paid in the amount the bank failed, the debt would be discharged. The debtor would, in effect, have paid the creditor himself. If the creditor, expressly or impliedly, authorises the use of the post for making payments the debtor is safe in following that course, and then, if the money is lost in transit and never reaches the creditor, this will amount to payment. But unless there is such authority—at any rate implied—the debtor will have to pay again if the money is lost. Even if authorised, however, it is assumed that ordinary precautions will be taken such as a prudent business man would take. In *Pennington* v. *Crossley* (1897), a merchant in Bradford had for many years sent cheques to a merchant in Halifax. At last one was stolen, the endorsement forged and the cheque cashed by a stranger. It was decided by the Court of Appeal that a direction to send through the post will not be inferred solely from the fact of the debtor having for many years been in the habit of making payments by cheque in that way.

A payment must be accepted according to the stated wishes of the payer and, if a payment be made under express conditions, the creditor will, as a rule, be estopped from repudiating the terms upon which payment was made; but it was held in *Day* v. *McLea*, cited before, (*e*) that, where a cheque was sent "in full payment of all demands" and accepted "on account," whether or not it was a full payment was a question of fact and that there was no presumption of law adverse to the creditor.

If a debtor should authorise a third party to pay the creditor and the creditor agreed to special terms with the third party and the money thereby was lost, the payment would be complete; and the payment of a less amount by a third party was held, in *Hirachand Punamchand* v. *Temple* (1911), to discharge a debt. Should a third party pay for the debtor, the debtor must either authorise or ratify the act, otherwise the money could be repaid to the third party and the original debt revived; but such authorisation or ratification may be implied from the facts.

(*e*) See *ante*, p. 23.

A bill of exchange or other negotiable security may operate as payment, but it is presumed to be conditional and upon dishonour the original remedy revives, unless the instrument is in the hands of a third person for value. The creditor may sue either on the instrument or on the original debt. If, before such an instrument is due for payment, the debtor commits an act of bankruptcy, the original remedy revives. Should, however, the creditor prefer a bill when offered cash, the payment is absolute and the creditor can only sue on the bill. So also if a bill has been taken and it becomes valueless by the negligence of the creditor, e.g., if when it is dishonoured he fails to give the proper notice of dishonour and the drawer and indorsers are thereby released, the payment is absolute.

Payment must be made to the creditor or his agent. If made to the agent, it must be in and according to the usual course of business and also before the principal gives notice that he requires payment to be made to himself ; but in this case, however, if the agent has a lien on goods payment may still be made to him, e.g., a factor.

Giving of Receipts.—It is usual for a receipt to be given on the payment of money and, where a receipt is given if the amount is £2 or over, it must bear a twopenny stamp affixed at the time of signing, otherwise the receipt is valueless. If the creditor should refuse to stamp the receipt or should fail or refuse to give a receipt where a receipt would be liable to stamp duty, or in any way attempt to evade the stamp duty, he is liable to a fine of £10. But it would appear that no receipt can be demanded for a payment of under £2. If the receipt should not be stamped at the time of giving, it may be stamped afterwards by *impressed* stamp on payment of certain penalties, but in no case after a month from the date of payment. Certain payments are exempt from stamp duty on the receipt, i.e., for taxes, or for payment of seamen's wages.

Appropriation of Payments.—A rather important matter is the rule as to appropriation of payments. If a debtor owes several debts to one creditor and makes payment of a sum not sufficient to satisfy the whole amount owing, the money paid is appropriated, according to what is known as the rule in *Clayton's Case* (1816), as follows—

(*a*) To whichever debt the debtor desires, provided he exercises his option at the time of payment.

(*b*) If he makes no election, the creditor may do so at any time.

(*c*) If both fail to do so, the law considers the payment to be in respect of that actionable contract or debt which is

earliest in point of date, commencing with the liquidation of any interest that may be due.

If the party to whom money is offered does not agree to apply it according to the expressed will of the party offering it, he must refuse it and stand upon the rights which the law affords him. When the debtor has made no appropriation, after having had the opportunity of doing so, the creditor may appropriate. Therefore, if money belonging to the debtor should come into the hands of the creditor, as happened in *Waller* v. *Lacey* (1840), the debtor must first have knowledge of it before the creditor can appropriate to any particular debt. When the creditor has made a particular appropriation he can, at any time afterwards, alter his intention unless he has disclosed the account. He can appropriate to either a specialty or simple contract debt or even to a debt barred by the Statute of Limitations. Where, under this rule, he appropriates to a debt barred by the Statute of Limitations, this does not revive the right to sue for any balance of such debt.

In the case of a general running account between the parties, e.g., a banking account, the presumption is that payments extinguish the earlier items of debt, but a particular mode of dealing, or any stipulation between the parties, may entirely alter the case.

It was held in *Re Hallett's Estate* (1880) that the rule in *Clayton's Case* will not be applied against a *cestui que trust* where a trustee has mixed trust money with his own moneys in his banking account, and it is therefore presumed that in drawing from the account he drew his own money first and not the trust money.

Payment of Interest.—It is a general rule that interest on a debt cannot be claimed by the creditor unless, in the contract from which the debt arises, it has been provided that interest shall be payable. This rule is, however, subject to a few exceptions, and, even without an agreement to pay interest, it will be allowed in the following cases:—

(*a*) Where allowed by usage of the particular trade
(*b*) On money due on awards and payable on a certain day, if properly demanded
(*c*) On a bond with a penalty
(*d*) On money paid by a surety—against the principal debtor
(*e*) On money obtained or retained by fraud
(*f*) On all debts or sums certain payable at a certain time by virtue of a written instrument; or, if payable otherwise, from the date of a written demand for payment

giving notice that interest will be charged from the date of demand until payment (Civil Procedure Act, 1833, s. 4)

(*g*) On a judgment debt, interest at 4 per cent. runs until the judgment is satisfied (Judgments Act, 1838). This applies only to judgments of the High Court. A County Court judgment does not carry interest

(*h*) Where so provided by statute, e.g., Bills of Exchange Act, 1882

By agreement between the parties interest may be legally charged at any rate so agreed ; but there is one very important exception. Under the Moneylenders Act, 1900, the Court may re-open all transactions with a moneylender if the interest or charges are excessive and the contract appears harsh and unconscionable, or is such that a court of equity would grant relief ; and the court may award a sum which, under all the circumstances, seems to it to be fair, and may relieve the borrower from payment of the excess.

Breach of Contract.

The breach of a contract may or may not discharge it. If it does, the rights of the injured party are transformed into a new one—the right to resort to the various remedies mentioned below. Where the *whole* contract is broken it is undoubtedly discharged ; but, as a rule, where there is a partial breach only, the injured party cannot treat the contract as at an end, and is restricted to the remedy of an action for damages. The contract is not discharged by a partial breach unless it can be shown that the default is of such a nature as to destroy what the parties have agreed to be the essence of the contract. A case where partial breach was a discharge occurred where, in *Cutter* v. *Powell* (1795), an agreement was made to pay the mate of a ship a certain sum provided he did duty during the whole of a certain voyage. He died before the voyage was completed, and it was held that his representative could not recover anything, for he had not strictly carried out his contract and therefore no right of action had accrued.

Remedies on Breach.—Where the contract *as a whole* is broken, the following remedies are available to the injured party—

(*a*) To treat the breach as a discharge and refuse to perform his part

(*b*) To bring a claim for damages—either by action on his part or by way of counter-claim if the other party should bring an action against him

(*c*) To bring an action for a sum equivalent to the amount

of work he has done, where he has already carried out part of the agreement. This is called suing on a *quantum meruit* (for as much as has been merited or earned)

(*d*) To bring an action for specific performance in certain cases.

In the case of *partial breach*, if the failure to perform the one part of the contract goes to the foundation of the whole, then the injured party may be discharged from further performance of his part: otherwise, as mentioned above, he is entitled only to seek damages for the particular breach. When the contract is easily divisible into several stipulations, as, for instance, to deliver consignments of goods at stated intervals, then in the event of the breach of one of the stipulations the rule would be that the remedy is an action for damages. If the stipulation should, however, amount to a condition, breach of this will, as a rule, entitle the injured party to avoidance of the contract; but it is often very difficult to determine whether a particular stipulation is a condition or merely a subsidiary promise, such as a warranty. If the latter, the remedy for any breach will be an action for damages.

Conditions in contracts may be *concurrent* or *precedent*, i.e., they may be worded in such a way that both parties have to perform their parts at the same time, or that one party is not bound to do anything until the other has fulfilled his promise. Where one party by his acts, or in any other way, shows that he has no longer any intention of carrying out his contract, although he may have broken only one term, the other party will have the right to avoid his part of the agreement and perform no more under it.

On an executory contract, no action can generally be brought for breach until the date agreed for performance. But if one party renounces the contract, even before the time for performance has arrived, the other party may treat the contract as terminated and may at once sue for damages. The leading case on this point is that of *Hochster* v. *de la Tour* (1853), where *A* had been engaged by *B* in April to act as courier and to commence the employment in June. *B* wrote to *A* in May and told him that he should not require his services, and *A* commenced an action forthwith. It was held that an action would lie, for, as Lord Campbell said in the course of delivering judgment, "Where there is a contract to do an act on a future day, there is a relation constituted between the parties in the meantime by the contract, and they impliedly promise that in the meantime neither will do anything to the prejudice of the other, inconsistent with that relation." Further, if the contract is renounced during performance, there is a right of action forthwith. In *Cort* v. *Ambergate Railway Co.* (1851), *A* agreed to supply *B*

with railway material at a fixed price, deliveries to be made by instalments on certain specified dates. When *B* had received several instalments he told *A* he should not require any more. *A* thereupon brought an action at once. It was held that he was entitled to succeed, and it was only necessary for him to show that he was willing to perform his part and it was not necessary to prove actual delivery of the material. Also, an action will lie if performance is rendered impossible by the act of one of the parties, as where he renders himself incapable of performing it.

"A party to a contract becoming aware of a breach of a condition precedent by the other is entitled to a reasonable time to consider what he will do, and failure to reject at once does not prejudice his right to reject if he exercises it within a reasonable time. During that time he is entitled to inquire as to the commercial possibilities, etc., to guide him as to what course to take." (SCRUTTON L.J. in *Fisher Reeves and Co.* v. *Armour and Co.* (1920).

In considering the question of suing on a *quantum meruit*, it should be borne in mind that when a person has agreed to carry out an entire transaction for a certain sum and the whole of the work is not performed, that party is not entitled to sue unless it has been so agreed beforehand, as was decided in *Cutter* v. *Powell*, cited above (page 64), or unless the default in completing the whole transaction was due to the defendant's act.

Liquidated Damages.—Specified sums are often named in a contract which are to be paid by a party defaulting, and are usually styled in the contract "liquidated damages." Liquidated damages are such an amount as, in the opinion of the parties, will compensate for a breach of the contract. Amounts so mentioned in a contract may, however, be either liquidated damages or a penalty. A penalty is an amount in the nature of an imposition, which is inserted in the contract with a view of ensuring its performance. As a rule, the Court will award the amount agreed upon as liquidated damages as compensation in the event of a breach ; but, where the sum appears to the judge, upon a consideration of the whole instrument, and not considering only what the amount has been termed by the parties, to be really a penalty, then only so much of the amount as will actually compensate for the loss sustained will be awarded. The point to be considered is whether the loss which has accrued to the plaintiff can or cannot be calculated in money antecedently to the breach. If so, then if it is a reasonable sum it will be regarded as liquidated damages, and if an unduly large sum has been fixed it will be looked upon as a penalty ; but where the loss is of an absolutely uncertain amount the sum will be treated as liquidated

damages. The mere largeness of the amount fixed will not in itself be sufficient reason for holding it to be a penalty. Where a party covenants not to do a certain act, and, if he does it, to pay a certain amount, he cannot elect to do the act and pay the amount so fixed. It was decided, in the case of *General Accident Assurance Corporation* v. *Noel* (1902), that in such circumstances the injured party may elect either to recover damages or to have an injunction.

How Unliquidated Damages are Assessed.—Where no sum is mentioned in the contract, the amount of damages is left to the decision of the jury or judge, and is called "unliquidated damages." Damages are assessed so that the injured party should, as far as possible, be placed in the same position as if the contract had been performed, and prospective as well as incurred loss may be taken into account. This is, however, subject to certain considerations, as follows—

(*a*) The damages should be such as may fairly and reasonably be considered as arising from such breach of the contract or such as may reasonably be supposed to have been contemplated by the parties at the time of making the contract as the probable result of the breach; that is, the damages must not be "too remote." This was the effect of the decision in *Hadley* v. *Baxendale* (1854).

(*b*) In the case of special loss, if not falling under the foregoing rule, damages will only be awarded in respect of such loss if there has been an actual agreement in relation thereto, as laid down in *Horne* v. *Midland Railway Co.* (1873). If there are special circumstances connected with a contract which might be likely to give rise to special damages, the fact of notice having been given to one party by the other will not necessarily render him liable for special damages unless it can be shown that he consented to become so liable.

Specific Performance and Injunction.—These remedies are rarely applied in connection with mercantile contracts; but specific performance of a contract may be granted, in the case of, e.g., the sale of an *objet de vertu* (that is, an article of artistic merit) or a chattel which has a fancy value and for which damages would not compensate, and also under Section 52 of the Sale of Goods Act, 1893, *q.v.*

Discharge of Contract by Lapse of Time.

If there has been inordinate delay by both parties to a contract the inference may possibly be drawn that the contract has been abandoned; but, ordinarily, lapse of time does not put an end to contractual rights. It does, however, bar the remedy of an

action thereon. Although the remedy is barred, yet the contract remains in existence, so that a person having a lien will continue to have it. But there is an exception to this in the case of certain contracts relating to land, where the right is extinguished and not merely the remedy. The remedy of action is barred by what are known as the *Statutes of Limitation*, viz.,

(*a*) *The Limitation Act*, 1623, whereunder all actions on parol contracts shall be commenced and sued within six years next after the cause of such action or suit, and not after.

(*b*) *The Civil Procedure Act*, 1833, whereunder any action on a contract under seal must be brought within twenty years from the cause of action arising.

(*c*) *The Real Property Limitation Act*, 1874, whereunder on contracts relating to land, which will include the *personal* covenant in a mortgage deed, the right of action is barred after the lapse of twelve years. But, if there is a collateral bond by a third person, even though joined in the same instrument, the period as to the third person is twenty years. It has been held that *judgments* come within this Act.

An extension of time is allowed, e.g., if the party is an infant or *non compos mentis* (of unsound mind), and the six or twenty years will not commence to run until the attainment of majority or recovery of reason, as the case may be. Where, however, the time has once commenced to run, no subsequent disability will extend the time allowed wherein to bring the action. Further, if the *defendant* is beyond the seas (which does not include Ireland) or out of the jurisdiction *when the cause of action arises*, the statute does not run until the date of his return. Ignorance of a right does not prevent the statute from running, unless the ignorance was caused by the fraud of the defendant.

Acknowledgment of a debt, or part payment thereof, or payment of interest, revives the right of action; but such acknowledgment must now, by Lord Tenterden's Act (Statute of Frauds Amendment Act, 1828), be in writing and signed by the debtor; and it must be distinct and unconditional in its terms, and made before the commencement of the action. An acknowledgment or part payment to a party, not the creditor or his agent, is not sufficient to take the debt outside the statute. An acknowledgment by one of several joint debtors is not good against the others, except in the case of a mortgage, where an acknowledgment by one joint mortgagor binds the others.

Discharge of Contract by Merger and Estoppel.

Merger is the substitution of a higher grade of contract for a lower, e.g., a judgment for a simple contract debt; so that when

judgment has been given for a plaintiff the right of action is discharged and replaced by the judgment. On the other hand, if a judgment is given in favour of the defendant, the judgment acts as an *estoppel*, that is, it supersedes or replaces the right of action and estops or prevents the plaintiff from bringing another action for the same cause.

Bankruptcy in certain cases acts as an estoppel by preventing a creditor from suing his debtor for the amount of his debt, and when the bankrupt has obtained his discharge the former creditor is estopped from suing for any balance of the debt that he has not received. Further, if a party should make any unauthorised alteration in a material part of a written document he is estopped from attempting to enforce it.

Discharge of Contract by Impossibility of Performance.

A contract to do a physically impossible thing, e.g., to touch the sky, is void *ab initio* (from the beginning) ; as also, as a rule, is a contract relating to subject matter which has ceased to exist at the time of making the contract. If the impossibility arises subsequently the contract usually holds good, as for instance in the case of *Kearon* v. *Pearson* (1861), where *A* agreed to deliver a cargo to a boat in the usual time and, owing to delays caused by weather, it was impossible for him to carry out his contract ; and the court held that neither the contract nor the condition was put an end to. Similarly, in *Thornsett and Fehr* v. *Youills Ltd.* (1920), it was held that, on a contract for the sale of unascertained goods of a specified brand and of a particular year, the sellers cannot, in the absence of a special stipulation, set up as a frustration of the contract the non-manufacture of such goods in the year in question.

Exceptions.—There are, however, certain exceptions to this rule—

(*a*) *When the impossibility is caused by law*, e.g., an Act of Parliament being passed after the contract is made and rendering its performance illegal ; or even a temporary prohibition in pursuance of statutory powers may terminate the contract, as was held in the case of *Metropolitan Water Board* v. *Dick Kerr and Co.* (1918), where D. & Co. entered into a contract to construct certain works for the Board, with a clause in the contract that the Board's engineer could for good cause grant an extension of time for the completion of the work. The Ministry of Munitions, under statutory powers, ordered the cessation of work on the contract. D. & Co. claimed that this act put an end to the contract, while the Board said that the power in the contract enabling them to grant an extension covered the circumstances.

It was held that the contract was put an end to. If the impossibility is caused by a lawful act of the Government it will excuse performance, for example, in *Re Shipton Anderson and Co.* v. *Harrison Bros. and Co.'s Arbitration* (1915), where the Government requisitioned specific goods in the seller's hands before the property in them had passed to the purchaser.

(*b*) *When the performance depends on the continued existence of a given person or thing, the existence of which the parties must have known to be necessary to the fulfilment of the contract*, a condition is implied that impossibility arising from that person or thing ceasing to exist, either naturally or in a condition fit for the purpose of the contract, without the fault of the party liable to perform the contract, shall excuse the performance. Thus, in *Nickoll and Knight* v. *Ashton Edridge and Co.* (1901), a contract was made in October, 1899, whereby *A* sold to *B* goods to be shipped by a certain steamship at an Egyptian port in January, 1900, and to be delivered to *B* in England, and the contract provided against prohibition of export, blockade, or hostilities preventing shipment. In December, 1899, the ship was wrecked through no fault of *A*, and was so much damaged as to render impossible her arrival at the port of loading in January, 1900, and *B* sued for failure to ship the cargo in accordance with the contract. It was held that the contract must be construed as subject to an implied condition that, if through no fault of *A*, the ship had ceased to exist for the purpose of shipping cargo, the contract must be treated as at an end. In another case, that of *Robinson* v. *Davison* (1871), an artiste agreed to play at a concert but fell dangerously ill, and it was decided that no action would lie for her breach of contract. Also, in the leading case of *Taylor* v. *Caldwell* (1862), where an agreement was entered into to let a music hall and it was burned down, the contract was held to be terminated. Several similar cases arose on the letting and hiring of seats to view the Coronation procession of 1902. It was held in *Blakely* v. *Muller* (1903) that the rights of the parties must be ascertained as at the time when performance became impossible, and the contract is not void *ab initio*, but both parties are excused further performance under the contract, so that money already paid could not be recovered. There were many similar cases during the Great War, and those contracts were held in *Tamplin Steamship Co.* v. *Anglo-Mexican, etc., Co.* (1916) to be terminated because the change of circumstances had destroyed the object of the contract. Any contract involving trading or commercial intercourse of any kind with the enemy is unlawful, and therefore any such contract becomes, on the outbreak of war, impossible of further performance. Even if neither party is himself an enemy, if the contract is executory it is put

an end to absolutely ; but if the contract was entered into before the war with a person who becomes then an alien enemy, the contract is not necessarily put an end to if its further performance does not involve the doing of an illegal act, so that, e.g., as in *Halsey* v. *Lowenfeld* (1916), an enemy lessee can be sued for any rent accrued during the war ; and it was held in *Seligman* v. *Eagle Insurance Co.* (1917) that continued receipt of premiums on a policy of life insurance is not deemed intercourse with the enemy, but in the event of the death of the assured the right of his executors to demand payment of the policy moneys is suspended during the war.

Discharge of Contract by Bankruptcy.

Where one of the parties to a contract is adjudged bankrupt, the rights and liabilities under the contract pass to the trustee in bankruptcy ; but the trustee cannot enforce contracts for personal services unless the bankrupt is willing to render such services. The trustee may disclaim, i.e., abandon, unprofitable contracts, in which case if the other party suffers any loss he may prove in the bankruptcy for the amount of his loss. Where the contract is not disclaimed by the trustee, the other party may, in the case of a contract to deliver non-specific goods by instalments, refuse to deliver further instalments unless he is paid for them on delivery. Further, such party has the right to apply to the Court to rescind the contract, which it may do on such terms as it considers just, either as to payment to the trustee or proof against the estate, as the case may be.

CHAPTER 2

LAW OF AGENCY

One of the most important of the relations between commercial men is agency. An agent has been defined in COMYN'S DIGEST as a person "who is employed to do anything in the place of another." This is, perhaps, rather too loose as a definition, for the term "employment" is much wider in its application than the term "agency." Agency may be regarded more as employment for the purpose of bringing the principal into legal relations with third parties. The person who employs the "agent" is called the "principal," and all persons other than the principal and the agent are "third parties."

Except in circumstances where personal services are necessary or are contracted for, any person who has legal capacity may employ an agent to act for him, the maxim being *qui facit per alium facit per se* (he who acts through another acts himself); but the person acting as agent need not necessarily himself have legal capacity to contract; so that, for instance, even an infant may be appointed to act as agent.

Where one person is authorized to sign or act for another, it is called "procuration." The agent then customarily signs "per pro" or "p.p."

Classification of Agents.

There are various classifications of agents. In one the classes are divided according to the degree of authority vested in the agent, viz.,

(1) *General Agents*, who have authority to do anything within certain limits, e.g., to manage a particular business, and within those limits to bind the principal by their acts. Third parties may assume that such agents have power to do all that it is usual for a general agent to do; and, even where the principal has limited the agent's authority, the third party may safely do business with him unless he is aware of the limitation.

(2) *Special Agents*, who have authority to do some specific *act* only, e.g., to buy a particular thing, and this authority does not extend beyond that. If a special agent does anything outside his authority, the principal is not bound by it ; and a third party must not assume that the agent has powers, but should make due enquiry as to what is his authority.

(3) *Universal Agents*, who have unrestricted authority and who are very rarely met with in commercial life. They may do *anything* on behalf of the principal and the principal is bound by their acts.

Another classification is—

(1) Agents who are not, as a rule, personally liable on their contracts to their principal.

(2) Agents who are personally liable, i.e., *del credere* agents (one who guarantees the credit), who are personally liable if the third party does not carry out the terms of the contract. They are not liable, however, in the case of disputes, which must be settled in the usual manner ; but they are liable for an ascertained sum, in other words, they guarantee the solvency of the buyer. Such an arrangement does not fall under Section 4 of the Statute of Frauds, and it need not necessarily, therefore, be in writing.

Yet another classification is by kind, e.g.,

(1) Factors.
(2) Brokers.
(3) Insurance Brokers.
(4) Commission Agents.
(5) Shipbrokers.
(6) Stockbrokers.
(7) Auctioneers.
(8) Bankers.
(9) Partners.
(10) Servants.
(11) Wife.
(12) Ships' Masters and Managing Owners.
(13) Counsel.
(14) Patent Agents.

CREATION OF AGENCY

No special form is necessary, as a rule, for the appointment of an agent, providing the ordinary rules of contract are observed ; but it is, of course, advisable where possible to reduce the terms

to writing. In commercial life it would not be possible, however, to do this in all cases; and, in fact, in large numbers of cases the appointment is verbal and no express agreement is made. There are four ways, therefore, in which an agency may be created—

(1) By deed.
(2) By writing not under seal.
(3) Verbally.
(4) By implication.

There are certain purposes, however, for which an agent *must* be appointed in a special form—

(1) *Power of Attorney.*—If the agent is to contract under seal, he must be appointed by deed, called a "power of attorney." But, if the agent were not so appointed and he, in the presence of the principal, and with his consent executed a deed on his behalf, the principal would be estopped from denying in such case that the appointment was not under seal.

(2) *Agent for a Corporation.*—If he is to act as agent for a corporation, and his authority is to include the power of making contracts which if made by the corporation would need to be under seal, then the agent must be appointed by deed.

(3) *Signing the Prospectus of a Company or a Director's Consent to act as such.*—An agent appointed for these purposes must be authorized in writing.

(4) *Agency not to be performed within a Year.*—If the agency is one not capable of being or not intended to be performed within a year, writing is necessary as evidence (Statute of Frauds); but contracts which are unenforceable unless in writing can, nevertheless, be so made by an agent authorized verbally.

(5) *Grant or surrender of certain Leases.*—If an agent is appointed to grant or surrender leases of over three years he must be authorized in writing, and, as a deed is now necessary for this, it follows that a deed will be necessary for the creation of such an agency.

Apart from the above express methods of appointing an agent, there may be an implied appointment arising from the relation or conduct of the parties; thus a wife has implied authority from her husband to pledge his credit for necessaries. Again, if a servant has made purchases on his employer's behalf and the goods have been paid for by the employer, there will be an implied agency for future transactions with the same trades-

people ; for, if a person has so acted as to lead others to suppose that a certain person is his agent, he will be estopped from denying the agency—this is known as " agency by estoppel." A somewhat allied form of agency is established *of necessity*, e.g., the general authority of a ship's master to do anything and everything necessary to bring the voyage to a successful issue.

Ratification.—If an agent exceeds his authority in such a manner that the principal is not necessarily bound by the contract made he may, nevertheless, ratify, or adopt, the unauthorized act ; and the ratification is retrospective, that is, it dates back to the original transaction, and the position is the same as if the agent had been authorized beforehand ; the rule being *Omnis ratihabitio retrotrahitur et mandato priori æquiparatur :* (every ratification relates back and is equivalent to a previous command,) even if, as in the case of *Bolton Partners* v. *Lambert* (1889), in the meantime the other party has repudiated the transaction. This only applies, however, where the agent has purported to act as agent and not as principal ; not if he has had the intention of acting as agent, as in *Keighley Maxted and Co.* v. *Durant* (1901), but has not disclosed his intention of doing so. The transaction cannot be ratified by a third person so as to bind the other party without his consent. If a person without authority from a principal purports to act as agent, the acts of the agent may be ratified and the same result will ensue as in the case of an agent's exceeding his authority. The principal must adopt the whole transaction : he cannot ratify a part of it alone. An important point to bear in mind is that the principal must have been in existence at the time the contract was made, otherwise he cannot ratify it ; so that, for instance, a company cannot ratify a contract made before it came into existence by a person professing to act as its agent, and that person is personally bound by the contract unless he expressly excludes his own liability. Similarly, an agent is personally liable where he has acted in excess of his authority, or, without authority, has professed to act as agent, and his acts are not ratified ; he can be sued for damages for breach of implied warranty of authority. Where, as in the case of *Re Tiedemann and Ledermann Frères* (1899), an agent contracts in the name of the principal but fraudulently intends to take the benefit thereof for himself, the principal may ratify the contract and enforce it against the third party ; and, on the other hand, if an agent is guilty of fraud, the third party can sue either the principal or the agent.

RIGHTS AND DUTIES OF PRINCIPAL AND AGENT

Principal as against Agent.

The duties of agent to principal are—

(1) He must carry out with ordinary skill and diligence the work undertaken, in accordance with the terms agreed.

(2) He must acquaint the principal with all matters in connection with the agency as and when they come to his notice.

(3) He must keep proper accounts to render to the principal on demand.

(4) He must not use his position as agent for his own personal benefit, nor make use, on behalf of any other person, of any information which comes to his knowledge in his capacity of agent.

(5) He must hand to his principal all profits made, whether directly or indirectly, in the course of the agency.

(6) He must, as a rule, do the work himself, and not entrust it to another person, except where—

(*a*) The principal assents, expressly or impliedly.

(*b*) It is sanctioned by the usage of the trade.

(*c*) It is necessary for the proper carrying out of the work.

(*d*) It is rendered necessary by sudden emergency.

Agent expected to give his best service.—An agent is bound by the terms of his agreement with his principal, whether it be verbal or in writing, and he must carry out the work with ordinary skill and diligence ; but the amount of skill and diligence required will depend on whether the agent is to be paid or whether it is a gratuitous agency. He must not show less diligence than he would have exercised in his own affairs ; and, if he has undertaken to show special skill, he must exercise that skill to the agreed standard. Any loss incurred by the principal through the lack of skill or the neglect of the agent must be made good by the agent ; and, if he gives credit to a third party without the consent of the principal, the agent must himself make good any loss incurred through failure of the third party to pay. The agent also is liable to his principal if he has represented himself as possessing qualifications or skill which he does not possess.

There is, as mentioned above, a difference in the degree of skill demanded from a gratuitous agent and a paid agent. The former is, obviously, not liable for non-feasance, as he is not bound to enter on the agency ; but he is liable for mis-feasance

once he has entered on the agency. Feasance is the act of doing, so that non-feasance is the not doing or undertaking, and mis-feasance is the doing badly or wrongly. He must carry out the work without negligence, as it has been held that sufficient legal consideration has been given by reposing confidence in him; and recently it has been decided, also, that the giving of gratuitous advice is parallel. Thus, in the case of *Coggs* v. *Bernard* (1704), which is the leading authority on the law of bailments, *A* had promised *B* to take up some hogsheads of brandy from a certain cellar and lay them down again safely and securely in another cellar. By the fault of *A* one cask was smashed and the contents spilt. It was decided that *B* was entitled to recover from *A*, notwithstanding that *A* was not being paid for doing the work, but that being a voluntary bailee, i.e., a gratuitous agent only, he was liable for gross negligence. But in spite of this decision, where the voluntary bailee undertakes, expressly or impliedly, to use skill, he must exercise that skill. In the case of *Wilson* v. *Brett* (1843), *A* rode a horse belonging to *B* in order to exhibit it and offer it for sale, though he was not to be paid for doing it. The horse was injured by the non-exercise of certain skill. It was held that *A* was bound to use such skill as he possessed and, as he was proved to be conversant with and skilled in horsemanship, he was liable for the injury to the horse.

Secret Profits and Bribes.—The agent must keep, and render to the principal on demand, proper accounts of all transactions. He must not use his position for the purpose of benefiting himself. As laid down in the case of *Robinson* v. *Mollett* (1875), if the agent is employed to sell property he cannot purchase it himself, nor if he is employed to purchase property must he sell his own goods, without the express assent of the principal. Nor must an agent make any secret profit: if he does so it becomes the property of the principal. If the agent agrees to take a secret commission he cannot recover it, as was held in the case of *Harrington* v. *Victoria Graving Dock Co.* (1878); and, if the amount has been paid, the principal can recover it from the agent, who, in either case, forfeits his right to any remuneration earned in connection with the transaction. The same rule will apply to a sub-agent who is aware that he is employed by an agent for the principal: but it was decided in *Bath* v. *Standard Land Co. Limited* (1911) that it does not apply to the directors and officers of a corporation which had been appointed agent and had employed them in connection with the agency.

Similarly, if a bribe has been given to an agent, the principal has several remedies, viz.,

(1) He may dismiss the agent without notice, as in the case of *Boston Deep Sea, etc. Co.* v. *Ansell* (1888).
(2) He can recover the amount of the bribe from the agent if it has been paid over, or, if not yet paid over, then from the person who has promised it.
(3) He can proceed against the person who gave or promised the bribe in an action for damages, as in *Mayor of Salford* v. *Lever* (1891), irrespective of whether he has recovered the amount of the bribe from the agent.
(4) He may refuse to pay any commission or remuneration in connection with the transaction.
(5) He may repudiate the whole transaction, whether or not the offer of the bribe did, in fact, affect the agent's mind.

Further, it is an offence under the Prevention of Corruption Act, 1906, for an agent to accept, or for any person to give, corruptly, any gift or consideration, and such transactions are punishable as misdemeanours, both the parties being liable to a fine of £500 or to two years' imprisonment, or to both. Proceedings may not, however, be taken without the consent of the Law Officers of the Crown.

Delegation of Duties of Agent.—An agent may not, as a rule, delegate the work to another, but must carry it out himself, the maxim being—*Delegatus non potest delegare* (he to whom the work is delegated cannot delegate in his turn). This is the general rule where the authority is coupled with a discretion or confidence, e.g., to purchase a house at the best price possible, or where he has to exercise personal skill, e.g., to inspect, and if it is genuine to purchase, a picture. But in some cases delegation can take place, in particular where the principal has consented, either expressly or impliedly, or the delegation is necessary for due performance of the work. In this connection the case of *De Bussche* v. *Alt* (1878) is the leading authority. Here the plaintiff in England consigned a ship to a firm in China for sale on certain terms, and the firm in China, with plaintiff's knowledge, employed the defendant in Japan to sell the ship. It was held that an authority to the effect that delegation may be rendered necessary to the carrying out of the instructions of the principal may, and should, be implied where, from the conduct of the parties to the original contract of agency, the usage of trade or the nature of the particular business which is the subject of the agency, it may reasonably be presumed that the parties originally intended that such authority should exist, or where in the course of the employment unforeseen emergencies arise which impose upon the agent the necessity of employing a substitute.

The principal is not bound by or liable for acts of the agent

not done in the course of his employment as such, nor by acts outside the apparent scope of the agent's authority unless, of course, he has in fact authorized the agent to do the acts. But the principal is liable for any fraudulent acts of the agent done within the scope of his authority, and the injured party may sue either the principal or the agent. In *Newlands* v. *Employers' Accident Association* (1885), a secretary, by misrepresentations, induced a person to apply for shares in a company. The applicant for the shares was compelled to fulfil his contract as the company was not bound by acts outside the scope of the secretary's authority, it not being part of his duty to sell shares. It is still an unsettled question as to how far the principal is liable for innocent misrepresentation made by the agent. But where the agent did not act innocently and his unauthorized acts are not ratified by the principal, the agent will be liable in an action for damages for the breach of an implied warranty of authority; and in case of fraudulent misrepresentation of his authority he can, of course, be sued for fraud.

Agent as against Principal.

The rights of the agent against the principal are as follows:—

(1) To receive the remuneration agreed upon, together with any necessary or customary expenses incurred.

(2) To be indemnified against all losses and liabilities arising in the course of all lawful acts done in relation to the agency.

(3) To be indemnified against the consequences of wrongful acts against third parties, if done innocently and *bona fide*.

(4) A right of *lien* on the goods in connection with the agency until his charges are satisfied. This lien may be either *Particular* or *General*, according to the class of agent, and will be considered hereinafter. (*f*)

(5) In some cases, the right of stoppage *in transitu*. (*g*)

If no remuneration has been agreed between the parties, then there is an implied undertaking to pay that which is usual and customary in the particular kind of agency and, failing that, a reasonable sum by way of remuneration. The agent may sometimes be entitled to his remuneration even if the contract has not been completed, as in the case of *Prickett* v. *Badger* (1857), where an agent found a purchaser and the principal refused to complete. Similarly, as in *Simpson* v. *Lamb* (1855), where an agent had taken steps to find a purchaser and the principal sold the goods over his head, it was held that he was entitled to

(*f*) See *post*, p. 85 *et seq.* (*g*) See *post*, p. 141.

reasonable remuneration for the work done. This is, of course, in the absence of definite terms in relation thereto in the agreement for the agency.

It is customary in some lines of business, and even in others it is often agreed, that commission shall be payable on repeat orders from customers originally introduced by the agent, e.g., a commercial traveller ; in which case the agent is entitled to the commission on such orders even though he may not personally have obtained them ; and sometimes, depending of course on the agreement, such commission may be payable after the dismissal or death of the agent. But, apart from express agreement, the usual rule is that commission on repeat orders is not payable after the agent has ceased to represent the principal.

The agent may be entitled to be indemnified by the principal even if he has done a wrongful act against a third party, provided he did it at the principal's command and was himself not aware of the wrongful nature of the act. He is not entitled to be indemnified, however, against the consequences of all acts done ; if the loss be caused by his own default he cannot recover, or if it be incurred by adherence to a particular custom or usage of a market, and such custom or usage is not reasonable, he cannot recover unless his principal has express knowledge of it. For instance, in *Perry* v. *Barnett* (1885), *A* bought some bank shares through a broker and before settling day he repudiated the contract ; and the broker, who had to pay to avoid being declared a defaulter, sued *A* to recover the amount of his loss. The purchase was void under Leeman's Act (*h*), but it was shown that a custom existed amongst members of the Stock Exchange of disregarding its provisions. It was held that, as the custom was unreasonable and *A* was not aware of it, the broker could not recover. But in *Seymour* v. *Bridge* (1885), where, in similar circumstances, knowledge of the custom was shown to exist, a contrary decision was given.

Where an agent is employed to make bets he cannot recover for his principal any moneys paid away in respect thereof, but should he have received moneys on behalf of his principal he cannot retain the sums but must pay them over to his principal.

Third Parties as against Principal and Agent.

The rights and liabilities under a contract, so far as regards third parties, depend on whether the principal was disclosed or not by the agent, and also whether a principal did actually exist at the time of making the contract. In this connection there are important rules to consider:

(*h*) See *ante*, p. 44, and *post*, p. 234.

(1) *Disclosure of Principal.*—If the principal is disclosed at the time the contract is entered into, and he actually exists, the contract is with the principal and not with the agent, in the absence of an express statement of a contrary intention, or unless in accordance with a particular custom. But to this rule there are the following exceptions—

(*a*) Where the contract is made under seal the agent is always the party entitled to the rights and amenable to the liabilities under the contract, if made in his name.

(*b*) Where an agent purchases goods for a merchant resident abroad, *prima facie* the contract is with the agent (*Del credere* agent), unless the contrary intention is clearly shown, as in the case of *Thomson* v. *Davenport* (1829). But this rule has been considerably weakened by the decision in *Miller, Gibb and Co.* v. *Smith and Tyner* (1917), where it was held that if the contract is made by an agent who has authority to pledge the credit of the foreign principal, then if the contract is in terms made on behalf of the foreign principal, even though his name is not disclosed, the agent will not be liable but the principal will be.

(*c*) Where an agent signs a Bill of Exchange " as drawer or endorser or acceptor and adds words to his signature indicating that he signs for and on behalf of his principal, or in a representative capacity, he is not personally liable thereon "—but, where he does so in his own name, with or without words that merely *describe* him as an agent, then he is liable and not the principal except that he cannot be liable *as acceptor* unless he is the person to whom the bill has been addressed. In any event, the principal is not bound by the acceptance of his agent acting without authority except in some cases where authority is implied, e.g., partners.

(*d*) Where the agent undertakes personal liability, or the third party agrees to look exclusively to the agent, as was held in the cases of *Paterson* v. *Gandasequi* (1812) and *Addison* v. *Gandasequi* (1812), the principal has no liability to the third party.

(*e*) Where the agent has an interest in the proceeds, e.g., a lien, he may sue on the contract even though he has disclosed the principal.

(*f*) Where the agent is liable by the custom of trade.

(2) *Undisclosed Principal.*—It was held in *Sims* v. *Bond* (1833) that " where a contract not under seal is made by an agent in his own name for an undisclosed principal, either the agent or the principal may sue on it." Provided it is clear

from the contract that the agent did not pledge his personal credit, if the principal is not disclosed at the time of making the contract, but it is known that the agent is acting as agent, the agent is not liable on the contract; but if the fact of agency is not expressed, either may be sued by the third party as he may elect, and evidence may always be given of some usage or custom to show that the agent and not the principal is the person to be charged.

(3) *Uncertainty as to whether there is a Principal apart from the Agent.*—When the principal is not disclosed, and it is *not* known at the time of making the contract that the agent is acting as such, then the third party may, on learning the facts, sue either the principal or the agent. He must, however, make his election within a reasonable time of discovering the real principal, for the liability of the principal and agent is not joint, but several (alternative), and when he has obtained judgment against one party he cannot afterwards proceed against the other. He can, as decided in *Paterson* v. *Gandasequi*, cited above, be held to have elected by any act showing an unequivocal intention of holding the one party liable. If, before he discovers the fact that the supposed principal is merely an agent, as was laid down in *Thomson* v. *Davenport*, cited above, "although he may in the meantime have debited the agent with it, he may afterwards recover the amount from the real principal," as, necessarily, he cannot make his election until he knows the true facts. When the third party wishes to sue the principal, oral evidence may be admitted to show that a written contract made by a person was in fact made by him as agent and not as principal.

On default, the principal or the agent may sue the third party; but the principal cannot sue if the agent has in the contract described himself as principal, and evidence is not, in that event, admitted to show the contrary to enable the principal to sue. When the principal sues he must allow any right of set-off that the third party may have against the agent, provided it was acquired before the former knew that the latter was an agent and not a principal. But, if the agent sues, the third party could not set-off any debt due by the principal.

(4) *Non-existent Principal.*—It was laid down in *Kelner* v. *Baxter* (1867) that where a person has entered into a contract purporting to be on behalf of a non-existent principal, he is personally liable on the contract; but, ordinarily, if he had expressly contracted as agent he could not sue in his own name unless the other party had been informed of the non-existence of the principal and there had afterwards been part-performance of the contract.

As previously mentioned, if an agent contracts as such with-

out authority, or in excess of his authority, his acts may, usually, be ratified by the principal; but, if they are not ratified, although he cannot be sued as principal, he can be sued *ex contractu* (arising out of contract) for damages for a breach of an implied warranty of authority, even if, as in *Polhill* v. *Walter* (1832), he *bona fide* believed himself to have authority, and as held in *Yonge* v. *Toynbee* (1910), if he had no knowledge of the fact that the agency had been terminated; provided that the third party was not aware of the absence of authority. If his act was fraudulent, he can, of course, be sued *ex delicto* (arising out of a wrong), in an action for deceit. Where the agent had borrowed money, either without authority or in excess of authority, the principal is not liable, but the lender would have an equitable right against him to the extent of any of the moneys applied in paying the legal debts of the principal. Any person who suffers damage by acting on the untrue statement of a person that he had authority may sue for damages for breach of the implied warranty of authority even though the supposed agent does not purport to *contract* on behalf of the alleged principal. In the case of *Starkey* v. *Bank of England* (1903), one of two trustees forged his co-trustee's signature to a power of attorney and sold certain stock standing in their joint names in the books of the Bank of England. An innocent stockbroker, acting under the power, was allowed by the Bank to transfer the stock to other persons, and the Bank had to make good the loss. It was held that the Bank could be indemnified by the stockbroker on the ground that he had impliedly warranted his authority.

TERMINATION OF AGENCY

Contracts of agency may be terminated in several ways:

Termination by act of the parties.—This will arise on revocation by the principal, renunciation by the agent, or by mutual agreement.

The principal will, as a rule, remain liable on any contracts entered into on his behalf up to the time he notified third parties who have previously, on express or implied authority, dealt with the agent. For example, in the case of a servant who had left his master's employment, in the course of which he had had authority, *inter alia*, to borrow money, and who borrowed a sum of money after the termination of his employment, the lender could recover from the employer, as he had not been informed of the revocation of authority.

The principal has no power to revoke the agency if the authority is coupled with an interest, as for instance, a factor who, having been given authority to sell goods, has made advances

to the principal as a condition of being allowed to retain the moneys so advanced from the proceeds of sale. Whether an agent, employed for a stated time, can recover for loss of prospective commission where the agency is terminated by the principal before the expiration of the agreed time, is a matter depending on the particular contract ; and, usually, revocation by the principal would entitle the agent to compensation where part of the remuneration had been a salary of a stated sum per week.

Termination by expiration of the time agreed upon.—If an agency is created for a definite period, then on the expiration of that period the agency will terminate. There may, of course, be questions of settlement of account to be effected immediately afterwards.

Termination by performance of the contract or destruction of the subject matter.—If an agent is employed to sell a house, the contract of agency is at an end when the house is sold ; and if, before sale, the house is burned down the contract is also at an end.

Termination by death or insanity of principal or agent.—Death of the principal, unless otherwise agreed, puts an immediate end to the authority of the agent as where, in the case of *Smout* v. *Ilbery* (1842) a woman bought from a butcher supposing that her husband was alive, but he was dead at the time. The butcher could not recover from the husband's estate, as the wife had no authority to buy after the date of his death. But he could recover from the woman for breach of warranty of authority, as in *Yonge* v. *Toynbee*, cited above.

Similarly, the insanity, whether of the principal or the agent, will terminate the agency. If third parties who had previously dealt with the agent, as such, continue to deal with him without notice of the insanity of the principal, the principal will be liable if the decision in *Drew* v. *Nunn* (1879) is followed, but in all probability *Yonge* v. *Toynbee* would prevail and damages for breach of warranty could alone be obtained.

Termination by the bankruptcy of the principal.—As a rule, the agent's authority will terminate on the bankruptcy of the principal ; but it is not necessarily terminated if the agent himself becomes bankrupt.

During the Great War it was held in *Marshall* v. *Glanvill* (1917) that a contract of agency which involved personal service was terminated, and not merely suspended, on the agent being *compelled* to join the army under the Military Service Act, 1916.

In some cases an agency may be irrevocable, e.g., where entered into by deed, or where authority is given for valuable consideration. Where the agent is authorized to enter into contracts, or to do any lawful act involving personal liability,

the authority cannot be revoked once the liability is incurred. Similarly, where the agent is to pay money to a third person, such authority is irrevocable as soon as the agent has contracted or bound himself to pay the money to that third person.

Stated broadly, it may be said, too, that where the authority is coupled with an interest, the agency is irrevocable unless by consent of the agent, and it is not even put an end to by the death, lunacy, or bankruptcy of the principal. An example of such an authority would be where *A* consigns goods to *B*, a factor, to sell at the market price, and retain part of the proceeds in consideration of *B*'s making advances to *A*.

KINDS OF AGENTS

Factors.

By the Factors Act, 1889, several statutes relating to factors and mercantile agents were codified and simplified. A " mercantile agent " is defined by Section 1 of the Act as one " having in the customary course of his business as such agent authority to sell goods, or to consign goods for the purpose of sale, or to buy goods or to raise money on the security of goods."

The Act deals in detail with dispositions by mercantile agents and by sellers and buyers of goods. For fuller information on these matters reference should be made to the Act itself. (*i*)

Factors are agents employed to buy, sell or otherwise deal with goods or merchandise consigned or delivered to them by or for their principal, for a consideration, which is usually on a commission basis. Such agents can sell the goods in their own names, can given warranties, receive payment and give receipts, give credit and pledge the goods. The factor has a lien on goods that come into his possession as factor, during the time they remain in his possession, for the amount of his commission ; or, if he should have become surety for his principal, then to the extent of his liability—that is, he may retain the goods until the amount due or for which he is liable is paid or satisfactorily secured. He also has an insurable interest in the goods that come into his possession in the course of his business. The difference between a factor and a broker is that the factor has possession of the goods and may sell in his own name, whereas the broker has not possession of the goods and does not sell in his own name.

Brokers.

Brokers are agents who are employed to buy or sell goods or merchandise for other parties. They do not have possession of such goods, and therein differ from factors. When a broker

(*i*) See *Appendix*, p. 364.

completes a transaction he makes and signs an entry of the terms of the contract in his book ; he then sends a Bought Note to the buyer and a Sold Note to the seller. The broker is in the first instance the agent of the seller, but when he has signed his book he is the agent of both parties, and the entry therein is sufficient to satisfy Section 4 of the Sale of Goods Act, 1893 ; and even if the entry has not been signed, if the Bought and Sold Notes agree, that is sufficient ; but, where the notes differ and there is no signed entry in the book, the contract is void. A broker is not liable personally on the contract so long as he observes the general principles of agency.

Insurance Brokers.

Insurance brokers are agents who are employed to negotiate policies of insurance, usually marine. Before the premium is paid it is, nevertheless, regarded as paid as between the assured and the underwriter (*k*), but the assured pays the broker, and the broker pays the underwriter. The broker has a lien on the policy for the amount of the premium and charges due by the assured.

Commission Agents.

This term is usually applied to an agent acting for a foreign principal for an agreed commission. He usually has a right of *stoppage in transitu* where a vendor could stop the goods. Strictly speaking, he is not an agent (see definition) but a principal who takes a fixed remuneration instead of what profit he can get.

Shipbrokers.

Shipbrokers are agents employed for a commission to negotiate the chartering of ships.

Stockbrokers.

Stockbrokers are agents employed to buy and sell stocks and shares in accordance with the rules of the Stock Exchange for a commission, and the person who employs a stockbroker is bound by such rules, even if he does not know of them, so that he must indemnify the broker for everything done in accordance therewith. (*l*)

Auctioneers.

Auctioneers are agents authorized to sell goods and merchandise by auction, for a recompense, usually a commission. The auctioneer has possession of the goods and a special

(*k*) See *post*, p. 201.

(*l*) But see *ante*, p. 44, and *post*, p. 234, for fuller exposition.

property in them, and he has a lien on them for his charges. He is the agent of the seller ; but, on the fall of the hammer, he becomes also the agent of the buyer and can sign the memorandum of sale so as to satisfy Section 4 of the Statute of Frauds and Section 4 of the Sale of Goods Act : but, as was decided in *Bell* v. *Balls* (1897), he must sign at the time of sale and not afterwards ; and, as a general rule, the signature of the auctioneer's clerk is not sufficient to bind the purchaser. The auctioneer may receive the whole of the proceeds of goods sold ; but only the deposit, and not the whole of the purchase money, on a sale of land (which includes houses and other buildings thereon). He has implied authority to sell goods without reserve and, even if he sells without reserve where a reserve has been placed on them by the seller, the buyer has a good title as against the seller unless, of course, he knew of the limitation of the auctioneer's authority.

The protection of *market overt* (*m*) does not extend to an auctioneer selling goods, and he is liable for the consequences of an inadvertent conversion ; he can also be held liable personally for a breach of warranty of authority on the sale of goods.

Conversion is the act of any person who in any way unlawfully meddles with and exercises an act of ownership over the goods of another. In the case of *Cochrane* v. *Rymill* (1881), *A* advanced money to *B* on a bill of sale of his furniture. *C*, an auctioneer, by direction of *B*, and without notice of *A's* rights, sold the goods and handed the proceeds to *B*. It was held that *A* could recover from *C*, as the dealing with the goods amounted to conversion. The auctioneer is protected, however, if the goods are sent to him in the ordinary course of the business of the person who sends them ; and he is not liable if he merely settles the price and takes no part in actually transferring the property, or in cases where he can claim the protection of the Factors' Act. Where no principal is disclosed, the auctioneer is liable personally on the contract and can sue in his own name.

While an auction is in progress, the full name and address of the auctioneer must be posted up in public view in the auction room, and the auctioneer must hold a licence, the cost of which is £10 annually.

The duties of an auctioneer are—

(1) Not to delegate his duties to his employees, unless with special authority, or unless a special custom exists to that effect. If a person, known not to be a licensed auctioneer, is requested to sell goods by auction there is authority for him to employ a licensed auctioneer.

(*m*) See *post*, p. 138.

(2) He must sell for *cash*, except in cases where it is customary to take a cheque and he acts without negligence.
(3) He must store the goods properly whilst he possesses them.
(4) He should obtain the best price possible; and if he delivers the goods without receiving the price he is responsible to his principal.

Bankers.

Bankers are agents of their customers for the purpose of paying sums of money when ordered; but there are also other relations between the banker and his customer—those of either debtor or creditor, the relation depending on whether the customer's account is in credit or overdrawn. The banker is not a trustee for the customer and is not, therefore, accountable to him for profits made by use of the money deposited in the bank. In effect, the position is that the customer lends money to the banker, and the banker undertakes to repay the debt or any part of it to any person when and to whom the customer requires him to pay it. The banker must, therefore, pay cash against all cheques drawn by his customer, as there is an implied contract that he will honour all cheques of the customer to the extent of his credit balance, and also to the amount of any agreed overdraft, and if he fails to do so he is liable, as was held in *Marzetti* v. *Williams* (1830), for breach of contract, even though the customer may have suffered no actual loss or damage. He may also pay bills accepted by the customer payable at his bank (*n*), but he is not bound to do so. The banker must pay any part of the credit balance of the customer, but he is not bound to pay part of a cheque; so that if a customer's account is, say, £95 in credit and a cheque is drawn for £100, the banker need not pay the cheque at all. The difficulty could, obviously, be overcome by the payment of £5 to the customer's account by holder of the cheque who could then present the cheque, but this practice is of doubtful propriety and, in fact, as a rule, is not possible unless the banker has disclosed the state of the customer's account. It is improbable that a banker would do this, and it is certain that he is under an obligation not to do so in such a case.

A banker has a general lien on his customer's securities to secure any debit balance in the absence of special agreement, except those deposited for safe custody only. Where valuables or securities are deposited with a banker for safe custody only, he is not responsible for their loss if he is a gratuitous bailee, but if he charges a fee he is liable for negligence. Certificates of shares and bonds with bearer coupons are often deposited for collection

(*n*) See *post*, p. 104.

of dividends, and the banker cuts off the coupons when due and after obtaining payment he credits the customer's account with the amount.

A banker cannot recover from the payee money paid in error, as where he honours the cheque of a customer who has insufficient funds in his account; but he may recover from his customer as money paid at his request and for his benefit. Where a banker gives advice as to investments to his customer the position is doubtful as yet, but it was held in *Banbury* v. *Bank of Montreal* (1918) that a bank manager has no general authority to bind the banker by advice given, nor any special authority as regards a particular investment. If moneys are allowed to remain with the banker for six years without the account being operated upon, the Statute of Limitations applies, and the banker may retain the money as his absolute property. Bankers do not, however, insist on their legal rights, the custom being not to refuse to pay the money to the proper party but, at the same time, not to seek out claimants. The matter of cheques will be considered hereinafter. (*o*)

Partners.

Partners are the agents of their firms, and they bind the other members of the firm in all matters relating to its general business. The Law of Partnership is dealt with in Chapter 5.

Servants.

Servants are rarely expressly appointed as agents of the employer, and the authority vested in them is usually implied from circumstances. Where the employer authorizes his servant to make purchases from tradespeople and pays for the goods without demur, an implied agency is created and, so far as concerns the particular tradespeople, will continue until revoked by express notice to them.

Wife.

Apart from express authority being given, a wife is an agent of her husband and has implied authority to pledge his credit for necessaries suitable to the style in which they live, and for nothing else; and even this implication is liable to be rebutted by proof that the husband makes the wife a sufficient allowance, or has forbidden her to pledge his credit.

Similarly, a wife, as housekeeper, has implied authority to pledge the husband's credit for such things as are necessary in the

(*o*) See *post*, p. 118.

ordinary management of the household. But this implication may be rebutted by it being shown that, in fact, she had no authority, and that the person with whom she deals knows that she is acting in excess of her authority. So that if a husband gives his wife an allowance for housekeeping and she deals with a tradesman who knows this, the husband is not liable for the price of any goods supplied, even though necessaries. In any other case the authority would only extend to necessaries, and the onus of proof is on the tradesman to show that the goods he supplied were necessaries.

If a married woman who had been forbidden to pledge her husband's credit employed an agent to make purchases on credit, the presumption is that she intended to pledge only her personal estate if the articles were personal necessaries or were luxuries ; and the seller would have recourse only against the wife's estate and not against the husband nor the agent if he knew him to be such. But if the goods were *necessaries for the household*, and neither the agent nor the tradesman knew that the wife had no authority, the husband would be liable.

The husband may, however, be estopped by his conduct from denying that he has given the wife authority, as where he has paid accounts for goods supplied. The particular tradesmen would in such case be justified in assuming that authority had been given unless they received express notification of revocation. If the wife has not been in the habit of dealing with particular tradesmen, the husband may revoke her authority as regards personal necessaries at any time without notice to any tradespeople, as was held in *Debenham* v. *Mellor* (1881) and *Morel Bros.* v. *Westmorland* (1904). If the wife is living apart from the husband through the fault of the husband, she has implied authority to pledge his credit for necessaries, but only if he neglects or refuses to make her a sufficient allowance.

Where husband and wife are living apart by mutual consent and there is an agreement as regards maintenance, the wife cannot pledge her husband's credit so long as the agreement is observed. If there should be no agreement as to maintenance, then the wife can pledge the husband's credit only if he does not make her a sufficient allowance, and she has not adequate means, and is not in receipt of maintenance from any other source. When the husband and wife are living apart under a judicial separation and the husband does not pay the amount of alimony awarded, the wife's right to pledge his credit revives, but it does not exist otherwise.

Where a married woman has entered into contracts in excess of her implied authority as agent for the husband, she will be liable to the extent of any separate estate she may have.

Ships' Masters and Managing Owners.

The master of a ship has implied authority to do everything necessary to bring the voyage to a successful conclusion. He can, on behalf of the owner, sell or mortgage the ship, pledge his owner's credit or jettison the cargo (*p*). When a ship is owned by several co-owners one of their number is often appointed to manage the business on behalf of all; he is then termed a managing owner (*q*), and has implied authority, apart from any express authority given by his co-owners, to do everything necessary on shore that concerns the employment of the ship, e.g., to make charter parties.

Counsel.

A person is in general bound by the acts of his counsel in all matters strictly within the scope of the action; but if counsel should exceed an express authority given him by his client it is probable that effect would not be given to the arrangement by the court. Counsel can only be approached through the medium of a solicitor.

Patent Agent.

The law relating to patents being highly technical, it is the usual course for an inventor to employ a patent agent to draw up the specification relating to the invention, and to file the necessary papers. Such agent must be registered, and a person who advertises himself as a patent agent without being duly registered is liable to a fine up to £20.

(*p*) See *post*, p. 188 *et seq.*.
(*q*) See *post*, p. 187.

CHAPTER 3

NEGOTIABLE INSTRUMENTS

Reference should also be made to the following :—

APPENDIX A.—Bills of Exchange Act, 1882, page 335.

APPENDIX B.—Bills of Exchange (Crossed Cheques Act), 1906, page 362.

APPENDIX C.—Bills of Exchange (Time of Noting Act), 1917, page 363.

An authority on negotiable instruments defines a negotiable instrument as " one the property in which is acquired by anyone who takes it *bonâ fide*, and for value, notwithstanding any defect of title in the person from whom he took it ; from which it follows that an instrument cannot be negotiable unless it is such that the true owner could transfer the contract or engagement contained therein by simple delivery of the instrument " (*r*).

What Negotiability implies.

Negotiable instruments therefore have the following characteristics, which are implied in the term *Negotiability* :—

(1) The property in them and not only the possession passes from hand to hand by delivery, or by indorsement and delivery.

(2) Any defect in the title of the transferor or of any previous holder does not affect the title of a " holder in due course." (*s*)

(3) A holder in due course holds " free of all the equities," that is, he is not affected by any defences that might have been available against previous holders.

(4) A holder in due course can sue in his own name.

The holder in due course of a negotiable instrument has a perfect title, even if he takes from a thief, and his title can be invalidated only in the case of a prior forgery (see below). Negotiable instruments are therefore exceptions to the two rules of Common Law :

(*r*) WILLIS on *Negotiable Instruments*, 1st Edn., p. 6.

(*s*) See *post*, p. 107.

(1) That *choses in action* are not assignable. Note, however, that they are assignable under the rule of equity (*u*).
(2) That "no one can give what is not his" (*nemo dat quod non habet*).

If there is any doubt as to whether an instrument is negotiable, a rough-and-ready test to apply is: Can a title be obtained through a thief? If the answer is in the affirmative, the instrument is negotiable; if in the negative, the instrument is not negotiable.

The most important negotiable instruments are bills of exchange, cheques, and promissory notes. Bills, notes, and cheques payable to bearer are freely negotiable and the title thereto is passed by simple delivery; but if they are payable to order, indorsement by the transferor is necessary, in addition to delivery, in order to convey a title free from existing defects. This necessity for the indorsement of an order bill, cheque, or note, provides the only important case where the title of a holder in due course may be defeated: he cannot under any circumstances have a good title if the indorsement of a previous holder has been *forged*, for no title can be made by, through, or under a forgery (*t*). Thus if an order cheque is stolen after indorsement by the holder, and is transferred by the thief, without further indorsement, to a holder who takes *bona fide* and for value, then the latter has a good title; but if the thief has *forged* the indorsement of the owner, and has then transferred the cheque, the transferee does not obtain any title or property in the instrument, for he does not become a *holder* in any sense of the word. It is a case of *no title*, not of a defective title.

Negotiability compared with Assignability.

The true meaning of *negotiability* can best be understood by a consideration of the difference between negotiability and assignability. It has already been stated that under the Common Law *choses in action* are not assignable, but the rule of equity now prevails in the Courts, under which effect is given to assignments of debts and other choses in action. *An equitable assignment* may be made orally or in writing, provided there is evidence of an intention to transfer the benefit of the subject matter, and the debtor is given to understand that the right to the benefit has been transferred. The Judicature Act, 1873, and certain other Acts, provide that a debt or other chose in action may be *legally assigned* so as to enable the assignor to sue in his own name, subject to the fulfilment of certain conditions (*u*). The following comparative table of the essential differences between legal

(*t*) See *post*, pp. 104 and 118. (*u*) See *ante*, p. 57.

assignability and negotiability will serve to bring out the principal characteristics of the latter :

Assignability.	*Negotiability.*
1. That the transfer must be in writing, and in conformity with any statute governing the particular class of contract, or with any express conditions contained in the contract ; *e.g.* the provisions of the Judicature Act, 1873 (see *ante*, page 57).	The property (*i.e.* absolute ownership) passes by mere delivery, or by indorsement and delivery of the instrument, without notice to the party liable.
The true assignee is the one who first gives notice to the party liable.	
2. EQUITIES. The transfer is "*subject to equities*," *i.e.*, the assignee takes the rights subject to any defence or set-off which the party liable could have raised against the assignor, and subject to the rights of third parties.	A "holder in due course" holds the instrument "free from equities," *i.e.*, he takes the rights free from any defence which could have been raised by a former party, and without being subject to the rights of third parties.
3. TITLE. The assignee can acquire only the same title as was possessed by the assignor.	A "holder in due course" takes the rights free from any defect in the title of a prior holder.

A practical example will serve to illustrate the foregoing distinctions : *A* owes *B* £50, and gives *B* a written acknowledgment of the obligation in the form of an I.O.U. *B* can assign this *chose in action* to *C* by an assignment in writing on giving notice in writing to *A*, but *C*'s right to the £50 is subject to any set-off or counterclaim which *A* may have against *B*. If, however, *A* gives *B* a promissory note for £50, *B* may transfer the note to *C*, by mere delivery if it is payable to bearer, or by indorsement and delivery if it is payable to order, and provided *C* takes the instrument *in good faith* (whether for value or not), he can claim payment of the £50 from *A*, and is not affected by any claim *A* may have against *B*.

Negotiability compared with Transferability.

The foregoing example will serve also to illustrate a further important distinction ; that between negotiability and transferability. Many instruments, which are *not negotiable*, may be passed from hand to hand for value without the formalities of assignment in such a way that the property in them is transferred from one person to another. Such instruments are *transferable* : if everything is in order the transferee obtains a good title, but the absence of negotiability means that the transfer is made "subject to equities," and the right of the transferee is liable to be defeated by any prior defects of title or by any defences which can be set up by prior holders. An extremely appropriate instance is that of the British Postal Order, on the face of which are printed the words, "Not Negotiable." In spite of this warning that the instrument is not negotiable in its origin, it is well known that these orders are frequently passed from hand to hand for value : such transfers are perfectly valid so long as all parties act honestly and in good faith, but the intervention of theft, fraud, or illegality is sufficient to defeat the right of any subsequent holder of one of these orders. For a certain period during the war, however, postal orders were made negotiable

instruments, and by virtue of this they became part of the currency of the country, passing by mere delivery, and conferring an absolute title on the bearer or actual physical holder.

Apart from the question of discharge by the party primarily liable when a bill becomes no longer negotiable, the characteristic of negotiability may in some cases be removed, and an instrument, previously negotiable, may be made not negotiable or made negotiable subject only to the fulfilment of certain specified conditions. For example, a crossed cheque (whether payable to order *or to bearer*), which is a negotiable instrument, may be made *not negotiable* by the addition of these two words to the crossing on its face. An open order cheque, which in its origin is negotiable by indorsement and delivery, may be made not negotiable by the addition to the payee's name of words prohibiting transfer, as for instance, "Pay James Brown *only*." Similarly the negotiability of an open or a crossed cheque may be removed if it is restrictively endorsed, although it is to be noted that where a restrictive indorsement permits further transfer, then, although the instrument loses its negotiability, it is nevertheless still *transferable*.

The true owner of a Negotiable Instrument is the person who is entitled to the property in the instrument. There is a presumption that the bearer of an instrument payable to bearer is the true owner, and therefore any negotiation by him is valid and effectual, as far as third parties, acting in good faith, are concerned. The true owner of an instrument payable to order is generally the person to whom the instrument is by its terms made payable. A holder in due course is always a true owner, even in respect of a stolen negotiable instrument which has been transferred to him. The person from whom the instrument was stolen has no rights over the instrument in precedence of those of the holder in due course.

It must be borne in mind that an *absolute* title to a negotiable instrument, good against all the world, is not passed unless the instrument is taken for valuable consideration, and in good faith. Valuable consideration in regard to bills of exchange (*w*) is always presumed until the contrary is proved, and although, in the case of an accommodation bill (i.e., one which a person has signed without receiving value therefor, or for the purpose of lending his name to another party), valuable consideration is absent as between the party accommodating and the party accommodated, yet as soon as value has been given for the bill a subsequent holder obtains a valid title good against everyone, including the accommodating party. Good faith is defined by section 90 of the Act. Any *mala fides* must be proved very clearly in order

(*w*) See *post*, p. 109.

to dispute the title, and the fact that a person has not exercised great caution, or has shown negligence, will not necessarily be sufficient to upset the title. This, however, depends on the circumstances. For instance, in *London Joint Stock Bank* v. *Simmons* (1892), a broker who held negotiable instruments belonging to his clients, in fraud of the owner pledged certain of them with his bankers, who made no inquiries as to whether they were his or whether he had authority to deal with them. The broker absconded and the bankers realized the securities. The true owner, who had merely left the securities with the broker in the ordinary way of business, brought an action against the bankers ; but it was held that, there being no circumstances to create suspicion, the bankers were entitled to realize the securities and retain the proceeds. But in a similar case, *Sheffield* v. *London Joint Stock Bank* (1888), the bankers had notice that the broker was himself only a pledgee re-pledging, and therefore they could not get a better title than he himself had.

Instruments recognized as Negotiable.

In the Introduction it was stated that the custom of merchants became part of the *law merchant*, and was enforced and administered by the Courts. This applies particularly to negotiable instruments, and the Courts, in several modern decisions, have judicially recognized the general usage of merchants in regarding as negotiable various instruments payable to bearer. In the case of *Bechuanaland Exploration Co.* v. *London Trading Bank* (1898) debenture bonds to bearer under the seal of a company were legally recognized as negotiable when it was shown that by mercantile usage they were so treated. In the more recent case of *Edelstein* v. *Schuler & Co.* (1902), it was not only held that British and foreign bearer debentures were negotiable instruments, but it was stated that the Court would take judicial notice of the negotiability of such instruments, without requiring evidence to prove the usage of merchants in regard to them. Certain instruments are regarded as negotiable by Acts of Parliament, notably Bills, Cheques, and Notes. The negotiability of others has been recognized from time to time by legal decisions in the Courts based on evidence of mercantile usage.

Amongst English instruments now legally recognized as negotiable are :—Bills of Exchange, Promissory Notes, Cheques, Exchequer Bills, East India Bonds, Bank Notes, Dividend Warrants, Share Warrants, Bankers' Circular Notes, Debentures payable to Bearer, and certain scrip and bonds. The tendency is for the list of negotiable instruments to be increased when it is shown that by the custom of merchants an instrument is transferable by delivery and that it passes free from defects in the title of the

transferor. Foreign instruments are negotiable here only in so far as they are so recognized by English general mercantile usage. Bills of Lading, Post Office Orders, Share Certificates and Transfers are *not* negotiable, although some, e.g., bills of lading, have some of the characteristics of negotiability.

The most important forms of negotiable instruments which require detailed consideration are Bills of Exchange, Promissory Notes, and Cheques. The law relating to them has been collected and codified in the Bills of Exchange Act, 1882, which is set out in the Appendix and is referred to in the remainder of this chapter as "the Act." Short amending Acts were passed in 1906 and 1917, of which mention will be made hereafter.

BILLS OF EXCHANGE

The relative sections of the Act given in Appendix A should be constantly perused in connection with the following paragraphs. Section references are to the sections in the Act.

Definition.

Every word of the definition of a bill, as given in section 3 of the Act, is important, and every requirement must be fulfilled, for an instrument which does not comply with the conditions is not a bill of exchange.

The Essentials of a Bill are therefore that :—

(1) It must be in writing.
(2) The order must be unconditional ; i.e., there must be no conditions attached to the making of the payment.
(3) It must be addressed by one person to another, and it must be imperative in terms, i.e. it must be an order.
(4) It must require payment to be made to a specified person or to bearer.
(5) If the order is not to pay on demand, the time of payment must be fixed or determinable.
(6) It must order payment of a certain sum of money *only*, i.e. money as defined by the Coinage Act, 1870.
(7) It must be signed by the drawer.

The writing may be in ink or in pencil, and may be printed in whole or in part. The bill may not *order* any act to be done other than the payment of money ; for example an instrument running, "Pay A. B. or order and deliver to him the attached documents," would not be a bill. Reference should be made to section 17 (2) in this connection. A bill may not order payment to be made out of a particular fund, but a bill is not conditional if it contains (*a*) an indication of the particular fund from which the drawee may reimburse himself or a particular account to be debited, or (*b*) a statement of the transaction giving rise to the

instrument [Section 3 (3)]. An instrument made payable to "—— or order," the blank not being filled in, is not a legal bill of exchange, but it was decided in *Chamberlain* v. *Young* (1893) that it will be construed as payable to the order of the drawer, and if the drawer indorses it, it becomes a valid bill of exchange.

It is to be noted that many orders for the payment of money which do not come within the above definition, and are therefore not bills within the meaning of the Act, nevertheless come within the wider definition given in the Stamp Act, 1891, and require to be stamped as bills of exchange. The provisions of the latter Act are saved by section 97 of the Bills of Exchange Act, 1882.

Form.

No set form of words is necessary in a bill of exchange, as long as it conforms with the foregoing requirements, but, in practice, the form of an inland bill does not differ materially from that given on p. 334.

To every bill there are usually three parties, although, as will be indicated hereafter, one person may fill the rôle of two parties. In the specimen given, Arthur Brown is the "drawer" of the bill; Ernest Franks is the "drawee"; and Charles Davies is the "payee." If the drawee agrees to pay the bill on the due date, he "accepts," that is, he writes the word "Accepted" and his signature across the face of the bill. He is then termed the "acceptor." Until he does this he is not a party to the bill, and is in no way liable thereon. His signature alone, without the word "accepted," is sufficient, but this is not usual, as the date and also the place of payment are generally added. The drawee must be named or otherwise indicated with reasonable certainty, and a bill may be addressed to two or more drawees, whether partners or not; but if an instrument is addressed to two drawees in the alternative or in succession, it is not a bill of exchange. If the drawer and drawee are the same person, or if the drawee is a fictitious person, or a person not having capacity to contract, the instrument may be treated as a bill of exchange or as a promissory note. Where in a bill drawer and drawee are the same person, and the bill is dishonoured, the holder need not give notice of dishonour.

Unless a bill is payable to bearer, the payee must be named or otherwise indicated with reasonable certainty, and it may be made payable to two or more payees jointly or, in the alternative, to one of two or one of several payees, or to the holder of an office for the time being. The drawer may insert his own name as payee, or he may insert the words, "pay to me or my order," in which case he fills the position of two parties, being both drawer and payee. The bill may also be drawn payable to the drawee

(e.g., " Pay to your own order "), in which case it must be endorsed by him before it can be negotiated. If the payee is *fictitious*, or is a *non-existing* person, the bill is treated as being payable to bearer. Cheques made payable to impersonal payees, such as " Wages or order," " Cash or order," are frequently regarded as payable to bearer, although in practice bankers may require the indorsement of the cashier, or other person who receives the money, as evidence of payment. A banker who has been accustomed to treat such cheques as payable to bearer, cannot, however, discontinue to do so without incurring liability to his customer. On the other hand, cheques payable to such impersonal payees as " Income Tax or Order," " Borough Rates or Order," should *not* be treated as payable to bearer, and the discharge of a recognized official should be required.

An instance of what will amount to a " fictitious " person is found in the important case of *Bank of England* v. *Vagliano* (1891). It was held in this case that the payee is fictitious wherever the name inserted as that of the payee is so inserted by way of pretence merely, without any intention that payment shall be made only in conformity therewith, that it makes no difference whether the name inserted as that of the payee is that of an existing person, or of a person who did once exist, or of a person who never existed, and that the bill may in such case be treated by a lawful holder as payable to bearer. On the other hand where, as in *Vinden* v. *Hughes* (1905), a principal signs cheques to the order of actual customers for sums which his clerk had falsely told him were owing, such cheques are not treated as payable to bearer. In this instance, the clerk obtained such cheques and, having forged the indorsements, obtained cash from tradesmen for the cheques. It was held that the employer could recover the value of the cheques from the tradesmen who had cashed them, as the names of the payees were not used by way of pretence only ; consequently the payees were not fictitious, and the cheques could not be treated as payable to bearer.

As a rule, the amount for which the bill is drawn is expressed in figures in the top left-hand corner, as well as in words in the body of the instrument. Where there is a discrepancy between the two amounts, the sum denoted by the words is the amount payable. The sum payable is deemed " certain " although it is required to be paid (*a*) with interest, (*b*) by stated instalments, (*c*) by stated instalments with a provision that upon default in payment of any instalment the whole shall become due, (*d*) according to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

A bill is not invalid by reason that it is un-dated, ante-dated,

post-dated, or dated on a Sunday, or that it does not specify the value given, or that any value has been given therefor, or that it does not specify the place where it is drawn or where it is payable.

A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank. A bill is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties, but is not negotiable. For example, a bill may be drawn, "Pay John Brown *only*," or "Pay John Brown, *not transferable*," in which case no one except John Brown can safely be paid or is entitled to receive payment. Where the bill either originally, or by indorsement, is expressed to be payable *to the order* of a specified person, and not *to him or his order*, it is, nevertheless, payable to him or his order at his option.

An inland bill is one which is both drawn and payable within the British Islands or which is drawn within the British Islands upon some person resident therein. All other bills are foreign bills (section 4). (*x*) Unless the place of payment is clearly indicated, it may be reasonably assumed that it is payable at the residence or place of business of the drawee, and unless the contrary appears on the face of the bill, it may be treated as an inland bill. Thus a bill drawn in the Isle of Man payable in Liverpool is an inland bill, and so also is a bill drawn in Birmingham on a merchant resident in Paris, and accepted payable at a bank in London. On the other hand, a bill drawn in Paris on a person resident in London, and accepted payable in London, is a foreign bill.

The advantages derived by the mercantile community from the use of bills of exchange are very great. For example, if *A* owes £50 to *B*, but the agreement has been that it shall not be paid for three months, *B* would ordinarily have to wait that length of time for his money. *B*, however, could draw a bill of exchange on *A* to pay *B* or order £50 three months after date. If *A* accepts the bill, *B* can then transfer it to, say, *C*, to whom he owes money, or he may convert it into cash by discounting it at a bank.

Time of Payment.

A bill is not rendered invalid by reason of being undated, or being ante-dated, post-dated, or dated on a Sunday, although it is irregular to omit to date a bill. If a bill payable after date is undated, or if the date of acceptance of a bill payable after sight is omitted, any holder may insert the true date of issue or

(*x*) See *post*, p. 334.

acceptance, and the bill is payable accordingly ; provided that, where he in good faith and by mistake inserts a wrong date, or in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill is not avoided thereby, but it operates and is payable as if the date so inserted had been the true date.

A bill is payable on demand which is expressed to be so payable, or when it is expressed to be payable at sight, or on presentation, or when no time for payment is expressed. And, where a bill is accepted or indorsed when it is overdue, it is deemed as regards the acceptor or any indorser to be payable on demand.

A fixed time is not defined by the Act, but the term is customarily taken to apply to a bill drawn thus : " On the 18th September *fixed*, pay . . ." in which case no days of grace are allowed.

A bill is payable at a " determinable future time " within the meaning of the Act when it is expressed to be payable at a fixed period after date or sight, or on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain. But an instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

For instance, a bill payable seven days after the death of *X* would be a valid bill, as the specified event is bound to happen and therefore the " future time " is " determinable." But a bill payable seven days after the marriage of *Y* would not be valid, for, although the event may happen, yet it *may* not—there is no certainty. Similarly, a bill payable " seven days after my return from abroad " is not valid, for I may never return.

Where the bill is not payable on demand, the day on which it falls due is determined in accordance with the provisions of Section 14, which should be carefully studied.

In calculating the date of payment of a bill, in accordance with the provisions of this section, calendar months are reckoned and no allowance is made for lacking days, so that a bill at one month's date, dated 31st January, falls due on the 3rd March, whether there are 28 or 29 days in February. When a bill after sight is sighted on one day and accepted on another, the due date is calculated from the sighting date.

The bank holidays in England and Ireland are Easter Monday, Whit Monday, the first Monday in August, and Boxing Day, i.e. December 26th, if that day is a weekday, but December 27th if the 26th is a Sunday. In Scotland the bank holidays are New Year's Day, the first Monday in May and the first Monday in August, Christmas Day, and Good Friday. The effect of the Bills of Exchange Act, section 14 (1.b), is to make Christmas

Day and Good Friday in Scotland have the effect of common law holidays in England, the object being to render the law uniform in both countries.

One case was, however, overlooked, viz., when Christmas Day falls on Saturday and the last day of grace is December 26th. In Scotland the bill is payable on December 27th, as Christmas Day is a bank holiday, but in England the bill is payable on December 24th in accordance with section 14 (1.b).

Bills in a Set.

Bills may be drawn in a set of two, three, or more parts, and, where so drawn, each part of the set (known as a *via*) being numbered and containing a reference to the other parts, the whole of the parts constitute one bill. The acceptance may be written on any part, but it must be written on one part only ; otherwise, if more than one part is accepted, the drawee will be liable on each part as though it were a separate bill, except where all the parts get into the hands of one holder. Where the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof. Subject to the preceding rules, where any one part is discharged by payment or otherwise, the whole bill is discharged. Foreign bills are generally drawn in sets, but inland bills are rarely so drawn, as the object of the practice is to ensure safety, and speedy acceptance. The two parts are sent by different mails for acceptance, the second to arrive being attached to the already accepted first part in the hands of the holder, the two parts thereafter forming one bill.

Foreign Bills.

As stated above, any bill which does not fulfil the definition of an inland bill is a foreign bill. Foreign bills differ slightly from inland bills, as follows :

(1) They are usually drawn in sets of three, as mentioned in the preceding paragraph, with the condition expressed on each part that it is payable if neither of the other parts has been paid.

(2) Occasionally, a foreign bill is drawn at one or more *usances*. A usance is the customary time allowed for payment as between the country where the bill is drawn and the country of payment. If no period of payment is expressed, the maturity of the bill is reckoned at the period of usance between the two centres concerned. For example, the usance between London and New

York is sixty days' sight, the majority of bills being drawn at that currency. The practice is, however, fast dying out.

(3) Foreign bills negotiated in this country are stamped with *adhesive* foreign bill stamps, except in the case of foreign bills on demand, when postage stamps may be used. Inland bills, other than those subject to the twopenny duty, must be drawn on paper bearing *impressed* stamps.

(4) On dishonour, they require protesting as well as noting. (*y*) It is unnecessary to protest a bill which does not show on the face of it that it is a foreign bill. If, however, an inland bill bears a foreign indorsement it may be necessary to protest the bill in order to charge a foreign indorser in his own country.

The rules relating to the conflict of laws governing foreign bills will be found set out in section 72 of the Act. Broadly, it may be said that the law of the place where an act is to be done is the law governing the performance of such act; so that a bill drawn in England, accepted in Spain, and payable in France, is subject to English law as regards the drawing, to Spanish law so far as concerns the acceptance, and to French law in relation to the payment.

Capacity of Parties.

By section 22 of the Act, capacity to incur liability as a party to a bill is co-extensive with capacity to contract, except that a corporation cannot make itself liable as drawer, acceptor or indorser of a bill unless it is competent to do so under the law in force relating to corporations. It was held in *In re Soltykoff*, already cited, (*z*) that an infant is not liable upon a bill either as drawer, acceptor or indorser, even though he has given it for the price of necessaries supplied. He can be sued only upon the consideration. But where a bill is drawn or indorsed by a corporation having no capacity to do so, or by an infant, the drawing or indorsement entitles the holder to receive payment of the bill from, and to enforce it against, *any other party thereto*.

No person is liable as drawer, indorser or acceptor of a bill who has not signed it as such, except that a person who signs in a trade name or under an assumed name is liable as if he had signed his own name; and the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Under the Companies (Consolidation) Act, 1908, a limited company incorporated for the purposes of trade, or otherwise

(*y*) See *post*, p. 112. (*z*) See *ante*, p. 34.

having capacity, may be a party to a bill and will be bound if it is made, accepted or indorsed in the name of, or by or on behalf of, or on account of, the company by any person acting under its authority. But, as held in the case of *Premier Industrial Bank Limited* v. *Carlton Manufacturing Co. Limited* (1909), the person signing must be a person who is in fact acting under the authority of the company.

A signature by procuration (*per procurationem* or, in short, *per pro*) operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent in so signing was acting within the actual limits of his authority.

Any person who signs a bill as drawer, indorser or acceptor and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, is not personally liable thereon : but the mere addition of words describing himself as an agent, or as filling a representative capacity, does not exempt him from personal liability. Thus, if *A.B.* signs as " A.B., Manager," he is personally liable ; but if he signs " For X.Y.Z. Co., Ltd., A.B., Manager," he is not liable. A member of a partnership, if it is a trading concern, may draw, accept, and issue bills and other negotiable instruments in the name of the firm. But partners in firms not formed for the purpose of trade, or whose business does not normally demand the drawing or accepting or indorsing of bills, are not able to bind the firm by signing a bill in any capacity unless they are in fact so authorized, e.g., a partner in a firm of solicitors would have no implied authority to accept a bill in the name of the firm.

Forgery.

Where a signature is forged or placed on the bill without the authority of the person whose signature it purports to be, such signature is wholly inoperative and no right can be acquired thereunder unless the person against whom it is sought to enforce the right is precluded from setting up the forgery or want of authority. So that a forged indorsement on an order bill would give no title to a transferee and he would not be a holder in due course, even though he took the bill for value and with no knowledge of the forgery. But he could, however, recover the amount he himself had paid for the bill from the person who transferred it to him. It has been held that if the holder of a bill on which the acceptance is forged gets the acceptor to ratify it, such ratification fails as being contrary to public policy.

Acceptance.

Acceptance is defined by section 17 (1) of the Act as " the

signification by the drawee of his assent to the order of the drawer." In the same section are given the essentials of a valid acceptance. Section 18 specifies the time for acceptance, and section 54 the liability of the acceptor. As between the parties liable on a bill, the drawee who accepts for value becomes the principal debtor, and the drawer and indorsers become, as regards him, sureties.

An acceptance is either—

(*a*) *General*, which assents without any qualification to the order of the drawer, or

(*b*) *Qualified*, which in express terms varies the effect of the bill as drawn. In particular, an acceptance is qualified which is :

(i) *Conditional*, i.e., makes payment by the acceptor dependent on the fulfilment of a condition therein stated. An acceptance " Payable on delivery of Bills of Lading " would be conditional.

(ii) *Partial*, i.e., an acceptance to pay part only of the amount for which the bill is drawn.

(iii) *Local*, i.e., an acceptance to pay only at a specified place. But such an acceptance is deemed general unless it expressly states that the bill is to be paid there only and not elsewhere, e.g. " Payable at Lloyds Bank, Rhyl, and *there only*."

(iv) *Qualified as to time*, e.g., drawn at one month and accepted at three months.

(v) The acceptance of some one or more of the drawees but not of all.

Wherever possible an acceptance will be construed as general and not as qualified.

The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonoured by non-acceptance.

The acceptor may be either an ordinary acceptor, i.e., one who owes money to the drawer, or an *accommodation* acceptor, i.e., one who accepts for the convenience of the drawer without receiving consideration. Such an acceptor is liable on the bill to a holder for value, and it is immaterial whether when such holder took the bill he knew the acceptor to be an accommodation acceptor or not ; but the acceptor can claim to be indemnified by the drawer.

Acceptance, and in fact every other contract on a bill, is incomplete and revocable until delivery of the instrument in order to give effect to it.

Sections 39 and 40 of the Act specify when presentment for acceptance is necessary, and the time of presentment.

As a matter of business, it is advisable that a bill should be presented for acceptance as soon as possible, for, if acceptance is refused, the parties to the bill, other than the drawee, become immediately liable, even though the bill has not yet matured. The wrongful omission of an agent to present a bill, would render him liable to his principal for any loss resulting.

The Act lays down in section 41 many rules as to presentment for acceptance and excuses for non-presentment. The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Reasonable diligence must be used to find the drawee, or some person authorized to act for him. Putting a bill in a bill-box, or handing it to a clerk in the office in the usual way, is a valid presentment to the drawee. If, however, the drawee is not a trader, presentment to a servant at the door is not sufficient.

Acceptance for Honour.

Ordinarily, only the person to whom a bill is addressed can accept it; but there is an exception where a bill has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue. Then any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *suprà protest*, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. A bill is non-accepted where the person to whom it is addressed cannot be found, or by reason of infancy or other causes cannot accept, or refuses to accept. A holder obtains an acceptance "for better security" when he endeavours to protect his interests by obtaining an acceptance for honour in cases where the acceptor has become bankrupt or insolvent, or suspends payment before the bill matures.

Such an acceptance, which is rarely met with, is termed "an acceptance for honour *suprà* protest" and the acceptor is called "an acceptor for honour." Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer. In order to be valid, such an acceptance *must*—

(*a*) be written on the bill and indicate that it is an acceptance for honour;
(*b*) be signed by the acceptor for honour.

A bill *may* be accepted for honour for part only of the sum for which it is drawn. The liability of an acceptor for honour is not absolute, but accrues only if the bill is not paid by the

drawee, and then only if it has been duly presented for payment and, on dishonour, has been protested for non-payment, and the acceptor for honour receives due notice of these facts. The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

The drawer of a bill or any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the "referee in case of need." It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Negotiation.

A bill may be payable either to order or to bearer. As before mentioned, a bill may contain words prohibiting transfer, or indicating an intention that it should not be transferable, in which case, although it is valid as between the parties, it is not negotiable. The Act says that a bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill. A bill payable to bearer is negotiated by delivery and no indorsement is necessary; but indorsement is desirable so as to make the transferor liable as a party to the bill in case it is dishonoured. If he does not indorse it he simply warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Where the transferor indorses the bill he becomes an indorser and is liable in accordance with the provisions of section 55 (2) of the Act.

A bill payable to order is negotiated by the indorsement of the holder completed by delivery. Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee, in addition, acquires the right to have the indorsement of the transferor. Where any person is under an obligation to indorse a bill, he may indorse it in such terms as to negative or to limit his personal liability.

The first step in negotiation is when the bill is handed by the drawer to the payee. This is generally before acceptance, but may be after acceptance has been obtained. He then becomes a "holder in due course," if he conforms with the provisions in section 29 (1) of the Act.

Conditions as to Indorsements.—To be valid, and to operate as a negotiation, an indorsement must comply with the conditions laid down in section 32 of the Act. These should be carefully

studied, as also should the three following sections of the Act which deal with the various types of indorsement.

In the event of there not being sufficient room on a bill for all the indorsements, a slip of paper called an "allonge" is attached to the bill. The first indorsement on an allonge should be written partly on the bill and partly on the allonge, so as to avoid the possibility of fraud.

An *indorsement in blank* is where the indorser simply signs his name. The effect of this is that the bill becomes payable to bearer, and is at once transferable by mere delivery even though originally it was payable to order. Any holder of a bill with a blank indorsement may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to, or to the order of, himself or some other person. A *special indorsement*, in addition to the signature of the endorser, specifies the payee, as "Pay to A.B. and Co. or order." If A.B. and Co. desire further to negotiate the bill, they must indorse it. A *restrictive indorsement* may be a mere authority to deal with the bill as directed, and not a transfer of the ownership, or the indorsement may prohibit the further negotiation of the bill, as "Pay A.B. only" or "Pay C.D. or order for collection." Such an indorsement gives the indorsee the right to receive payment of the bill, and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorizes him to do so. Where the restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

A conditional indorsement is one in which payment is made subject to the fulfilment of a condition. The condition may, however, be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not. Presumably the condition is operative between indorser and indorsee, and if the latter received payment without the condition being fulfilled, he would hold the money in trust for the indorser. An example of such an indorsement would be "Pay A. B. or order on his leaving for London," or "Pay A. B. or order on his marriage to M."

Ordinarily, every prior indorser may be called upon to pay the amount of the bill by a subsequent indorser, who has been compelled to pay the bill on account of the failure of the acceptor to meet it, and, in the same way, the first indorser may fall back upon the drawer. The rule is that indorsements are presumed to have been made in the order in which they appear on the bill, but the whole circumstances attendant on the transaction

may be considered in order to ascertain the true relation to one another of the parties. Thus, in *Macdonald* v. *Whitfield* (1883), three directors of a company mutually agreed with one another to become sureties for the debt of the company and indorsed a note accordingly. It was decided that the first of the three indorsers need not indemnify the others, but that all three were liable to equal contribution. An indorser may so indorse a bill as to be under no liability on it, by putting after his name the words *sans recours* (without recourse to me) or words to the like effect —but, of course, the indorsee may refuse to take such an indorsement.

Where a bill is negotiable in its origin, it continues to be negotiable until it has been (*a*) restrictively indorsed or (*b*) discharged by payment or otherwise. An overdue bill can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

Circuity of action.—If a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of sections 59 (3) and 60 of the Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable, as they have a corresponding right against him. Such a condition of affairs is known as " circuity of action," and may be illustrated as follows : *A* indorses a bill for value to *B*, who negotiates the bill and eventually it is indorsed back to *A*. In the event of *A*, in his second capacity as indorser, having to pay the bill, he cannot sue *B* as a prior indorser, for *B* in turn could sue *A* on the latter's first endorsement.

Consideration for a Bill of Exchange.

The words " for value received " are usually inserted in a bill of exchange, but they are not necessary, as value is presumed until the contrary is shown. Herein a bill of exchange differs from an ordinary simple contract. There is also another point of difference ; in a simple contract the consideration must not, as a rule, consist of a past benefit, but consideration in the case of a bill of exchange may consist of any consideration sufficient to support a simple contract, or of *any antecedent debt or liability*. If value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time. So that it is no defence for any such party to plead that he received no consideration for it, although the holder who did not give value cannot maintain an action against his immediate transferor.

In an action on the bill, a holder is deemed to be a holder in due course, but the defence may be set up of fraud, duress, illegality or want of consideration, in which case the holder must then show, as decided in *Tatam* v. *Haslar* (1889), that after the alleged fraud he took the bill in good faith for value and without notice of the alleged fraud. This decision was slightly amended in the case of *Talbot* v. *Von Boris* (1911) to read " unless he is the person to whom the bill was originally delivered."

Occasionally, a bill is signed by a person as drawer, acceptor or indorser, without his receiving value therefor, for the purpose of lending his name to some other person. The person so signing is, as before mentioned, an " accommodation party " to the bill, and, in effect, is surety for his friend. A holder for value may sue the accommodation party, even though when the holder took the bill he knew the party to be a surety only. But until value has been given no party is liable on an accommodation bill. Such bills are often termed " fictitious bills," " kites " or " windmills."

If a bill is given for money owing for gaming or wagering debts, the consideration is illegal and the bill void as between the original parties. Even a holder for value who takes with notice cannot enforce payment ; but if he took without notice he would be able to do so.

The adequacy or otherwise of the consideration is immaterial, provided, as was held in the case of *Jones* v. *Gordon* (1877), that it is not so extremely small as to raise the presumption that the holder did not take the bill in good faith and without notice.

Alteration of Bill.

The completion by the holder of an inchoate instrument, as provided for by section 20, must be carefully distinguished from material alteration.

Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, it is avoided except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers. But, where the bill has been materially altered and the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. The following are examples of material alterations—alteration of the date, the sum payable, the time of payment, the place of payment and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent. The alteration of the number of a bank note, and adding the name of a maker to a joint and several note, have been held to be material alterations.

In the case of *Garrard* v. *Lewis* (1883), *A* signed an acceptance with the amount not filled in in the body of the bill, but the figures in the margin were £14 0*s*. 6*d*. The drawer having filled up the bill for £164 0*s*. 6*d*. altered the figures in the margin to correspond. It was decided that the figures were not a material part of the bill, so that the alteration was no defence to an action by a *bonâ fide* holder. But, in the case of *Scholfield* v. *Lord Londesborough* (1896), a bill was drawn for £500 with a stamp sufficient to cover £4,000, and with vacant spaces before the amount, both in the words and figures. The acceptor, having written his acceptance, handed it to the drawer, who fraudulently altered the bill into one for £3,500. It was held that a holder in due course could recover only the £500, the amount for which the bill was originally drawn, and that there was no duty on the acceptor to take precautions against opportunity of fraudulent alteration after acceptance, so that he was not liable on the principle of estoppel.

Presentment for Payment.

The rules given in section 45 as to presentment for payment should receive careful attention, and should be compared with those governing presentment for acceptance (section 41).

As regards the party primarily liable, i.e., the acceptor of a bill, it is not incumbent on the holder of a bill payable on a given day to demand payment. The acceptor is bound to provide for payment on the date the bill becomes due. Even where by the terms of a qualified acceptance presentment for payment is required, by section 52 (2) the acceptor is discharged only by the omission to present if there is an express stipulation to that effect.

But as regards the other parties, i.e., the drawer and indorsers, it is necessary in order to render them liable that the holder should present a bill not payable on demand to the acceptor on the very day it becomes due, or, where the bill is payable on demand, then within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable. Delay caused by circumstances beyond the control of the holder is excused if not imputable to his default, misconduct or negligence.

Where a bill is presented at the proper place, and after reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

A bill is dishonoured by non-payment when—

(*a*) it is duly presented for payment and payment is refused or cannot be obtained;

(*b*) presentment is excused and the bill is overdue and unpaid.

Usually, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of Dishonour.

Unless notice of dishonour is waived or in some way excused, notice of the dishonour of a bill, whether by non-acceptance or by non-payment, must be given within the stipulated time to the drawer and to each indorser, otherwise a drawer or any indorser who does not receive due notice is discharged from all liability both in respect of the bill itself and as regards the debt or consideration for which the bill was given. There are two exceptions to this, however, as specified in section 48 of the Act. To be effectual, notice of dishonour must be given in accordance with the rules laid down in section 49 of the Act. The holder may himself give notice to every party liable, or he may give notice to his preceding party in order of liability and leave it to the parties to pass on the notice from one to the other within the prescribed time. To protect himself, however, a holder should send notice to every party liable, as he thereby preserves his rights against each one of them, and his right to fall back upon any party prior to himself will not depend upon the promptness with which each prior party passes on the notice. If prompt notice fails to reach any party, he is rendered no longer liable as a party to the bill, and consequently is not able to pass on effectual notice to his preceding party. In computing the time at the disposal of each party for giving notice, non-business days are excluded.

Notice given by or on behalf of the holder enures for the benefit of subsequent holders and of all prior indorsers who have a right of recourse against the party to whom it is given. Thus if the holder gives notice to the drawer *X*, as well as to an indorser *Y*, or if the holder gives notice to *Y* and the latter passes on the notice to *X*, then, in both cases, the holder and *Y* can take advantage of the notice. But if, in the second case, *Y* did not send on notice, the holder could sue *Y* but not the drawer *X*. Further, any indorser prior to *Y* could take advantage of the notice given to *X*.

Under section 50 of the Act, notice of dishonour is dispensed with where the delay is caused by circumstances beyond the control of the party giving notice, and in certain other cases.

Noting and Protesting.

Noting is a minute made by a Notary Public, or a Consul, of the fact that a bill has been duly presented for acceptance or

payment, and that it stands dishonoured by non-acceptance or non-payment, as the case may be. At the request of the holder of a dishonoured bill, a notary again presents it to the party liable, and in the event of dishonour, the notary makes on the instrument, or on a ticket attached thereto, a *note* of the answer given, the date of presenting, his initials and charges.

Protesting is where a solemn declaration attesting the dishonour of the bill, and containing a copy of the bill, is drawn up by that official. It is not necessary to note or protest an inland bill in order to preserve the recourse against the drawer or indorsers, although it is usual to note a dishonoured bill in order to have legal proof of dishonour. It should be remarked that noting is merely a preliminary to protest; the former is usually made on the day of dishonour, and *must* always be made within the legal time limit (section 51 (4), and Bills of Exchange (Time of Noting) Act, 1917; *see* Appendix C), but the formal protest may be extended at any time thereafter as of the date of noting (section 93). Protest of an inland bill is necessary (*a*) as a preliminary to acceptance or payment for honour (sections 65 and 67); (*b*) for purposes of summary diligence in Scotland (section 98). It is advisable to protest an inland bill bearing a foreign indorsement so that the foreign signatory may be charged in his own country.

Where a bill is lost or destroyed or is wrongly detained from the person entitled to it, protest may be made on a copy or written particulars thereof. Protest may be dispensed with by any circumstances which would dispense with a notice of dishonour. (*a*)

If a notary is not available, a certificate of the dishonour of the bill, having the same effect as a protest, may be given by a householder or other substantial resident of the place, attested by two witnesses. (See section 94, and form of householder's protest on page 360.)

Measure of Damages on Dishonour.

When a bill is dishonoured, the measure of damages is—

(1) The amount of the bill;
(2) Interest thereon at 5 per cent. as from the date of presentment for payment if the bill is payable on demand, and otherwise as from the date of maturity;
(3) Expenses of noting and protesting (if any).

In the case of bills dishonoured abroad, the measure of damages will be the amount of re-exchange and interest thereon until the time of payment. Re-exchange is the loss resulting

(*a*) See *ante*, p. 112, and *post*, p. 350.

from the dishonour of a bill in a different country from that where it is drawn or indorsed.

The sum recoverable against a drawer or indorser in the United Kingdom is the sum for which a sight bill, drawn at the time and place of dishonour on the place where the drawer or indorser resides, must be drawn in order to realize, at the place of dishonour, the amount of the dishonoured bill and the expenses consequent on its dishonour. The expenses consequent on dishonour mean the expenses of protest, postage, customary commission, and brokerage, and if a re-draft be drawn, the price of the stamp (Chalmers).

Liability of Parties.

The liability of the various parties to a bill is fully and clearly set out in the Act. That of the acceptor is also explained under the heading "acceptance" on pages 102–103. For the liability of a drawer and of an indorser, see section 55.

Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course. If a person, not being the holder of a bill, backs it with his signature, he does not strictly indorse it, but he incurs the liabilities of an indorser. Such an indorsement or guarantee is known as an "aval."

Discharge of a Bill.

(1) *By payment.* See section 59. An accommodation bill is discharged when it is paid by the party accommodated, because he is the party who is ultimately liable in respect of the bill, and because it is put into circulation for his benefit. In the absence of agreement, an accommodated party is held to engage that he will provide funds for the payment of the bill at maturity, or that he will indemnify the accommodation acceptor if the latter is compelled to pay the bill.

Section 60 is very important from a banker's point of view. The banker is not protected if there is evidence of negligence, or of the absence of good faith, or of payment out of the ordinary course of business, or if he pays an instrument bearing a forged indorsement which is not a cheque, as for example a bill of exchange other than a cheque on a banker. Payment of a cheque out of business hours, or the omission to examine the indorsement, or payment to the account of an employee of a cheque payable to a firm, without due inquiry, would involve the loss of the protection.

(2) *By waiver.* See section 62.

(3) *By cancellation.* See section 63.

(4) *By lapse of time.* Under the Statute of Limitations the

remedy on a bill is barred after six years have elapsed from the date on which the bill *fell due.*

(5) *By negotiation to the acceptor* at or after maturity. See section 61.

Lost Instruments.

It is provided by the Act that if a bill is lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor. He must, however, give security to indemnify the drawer against any claims arising in the event of the original bill being found again. Should the drawer refuse to give such a duplicate bill, he can be compelled to do so. Further, the Court may, in any action or proceedings on the bill, order that the loss shall not be set up provided a satisfactory indemnity be given.

Documentary Bills.

Where a bill has attached to it the bill of lading, invoice, and policy of insurance relating to the goods against which it is drawn, so that they are available in the event of the bill not being honoured, it is termed a Documentary Bill. These documents convey the title to the goods, and, to enable the drawee to obtain the goods which he has purchased, arrangements are made whereby the documents are handed to him against either his acceptance or against his payment of the bill, the method adopted depending on his credit and standing. The bill is generally marked accordingly, i.e., "Documents to be surrendered on Acceptance (*or* on Payment)," and is known as a "D/A" or "D/P" bill, as the case may be.

The documents are attached to the bill in the first place by the drawer, when he has shipped the relative goods. On presenting his bill to a banker with the documents attached as security, he is enabled to turn it into cash by sale or discount. The banker, who retains the documents as security, collects the bill when due, through his correspondents abroad. As has already been stated, such instruments are of great service to the mercantile community in enabling a vendor to obtain speedy payment for goods sold overseas.

PROMISSORY NOTES

A bill of exchange has three original parties, whereas a promissory note has but two. A promissory note is defined by section 83 of the Act. If it purports on its face to be both made and payable within the British Isles it is an inland note; any other note is a foreign note. An instrument in the form of a

note payable to the maker's order is not a note until indorsed by the maker.

A usual form of promissory note is given on page 334. In the note there given, Clifford Dormer is the maker and Albert Bates the payee. Such an instrument can be indorsed and transferred in the same manner as a bill of exchange.

The maker engages that he will pay the note according to its tenor, and he is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse. A promissory note may be made by two or more makers, and they may be liable jointly, or jointly and severally, according to its tenor. If a note runs " I promise to pay " and is signed by two or more persons it is deemed to be a joint and several note. If the parties are liable jointly, each is liable for his proportionate share. If the parties are liable jointly and severally, any one maker may be called upon to pay the whole amount if his co-makers do not pay their shares. The maker is the person primarily liable on the note, and corresponds to the " acceptor " of a bill of exchange.

In case of default, each of the indorsers can be sued, but not until the note has been presented to the maker for payment and payment has been refused.

If a note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker or an indorser liable. In other cases, presentment is not necessary in order to render the maker liable ; but, to render the indorsers liable, presentment is always necessary.

A promissory note may, as in the case of a bill of exchange, be payable by instalments, if the instalments are stated. In the case of *Schaverien* v. *Morris* (1921), where a promissory note payable by instalments provided that if any instalment was not paid " punctually " the whole balance immediately became due, it was held that the word " punctually " did not deprive the maker of the note of the three days of grace allowed by section 14 of the Act. Protest of a dishonoured foreign note is not necessary, although it may be required for the purpose of charging a foreign maker or indorser in his own country.

Except in this connection, and as regards the provisions respecting " acceptance " and " bills in a set," in relation to bills, the provisions of the Act relating to bills of exchange apply, *mutatis mutandis*, to promissory notes. Under the Statute of Limitations, if a note is payable by instalments, the period begins to run from the date of default in paying an instalment, if there is a proviso that on default the whole amount of the note shall fall due. In the case of a note payable on demand the Statute

of Limitations runs in favour of the maker from the date of the note, and not from the date of its dishonour. Section 86 (3) of the Act negatives the application to promissory notes of the provisions of section 36 (3) in regard to overdue bills, so that a note payable on demand is not deemed to be overdue because a reasonable time has elapsed for presenting it for payment.

CHEQUES

Cheques are dealt with by the Bills of Exchange Act, 1882, wherein a cheque is defined as "a bill of exchange drawn on a banker payable on demand," so that the definition previously given of a bill of exchange will apply to cheques; and, except as mentioned hereafter, the provisions of the Act applicable to bills of exchange payable on demand apply equally to cheques. Before considering the matter of cheques, it is advisable to refer to the relation existing between a banker and his customer. (*b*)

A cheque does not need "acceptance" by the banker, and if he refuses payment he is, therefore, not liable in any way to the holder.

A person receiving a cheque should present it for payment within a reasonable time. If, through delay in presentation, the drawer has been prejudiced, the holder must bear the loss; e.g., if the bank failed and the drawer had therein sufficient funds to meet the amount of the cheque, he is discharged, and the holder must prove for the amount in the winding up of the bank. So if *A* had drawn a cheque for £100 on his bankers in favour of *B*, and *B* omitted to present it for an unreasonable time and the bank meanwhile failed, *A* would be discharged from further liability to *B* if he had had in the bank sufficient funds to meet the cheque: *B* could only prove for the amount of £100 in the winding up of the bank. What is a reasonable time depends on the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case. The old common law rules were that if a person who receives the cheque and the banker are in the same place, the cheque should be presented during the next day after it is received. If they are in different places, it should be forwarded for presentment within that time, and the person to whom it is forwarded should present it within the next day after he receives it. (*c*)

A person who takes a cheque that has been overdue for an unreasonable length of time, takes it subject to any defects in title, but it was decided in *London & County Banking Co.* v. *Groome* (1882) that the rule that a bill or note taken after maturity

(*b*) See *ante*, p. 88. (*c*) BYLES on *Bills*, pp. 21–23.

is subject to all faults to which it was subject in the transferor's hands does not primarily apply to cheques.

If, in the absence of just cause, (*d*) the banker should not pay a cheque on presentment when he has sufficient funds of the drawer in hand, he is not liable to the payee or indorsee, but he would be liable in damages to the drawer.

Forgeries.

As previously mentioned, no title can be made through a forgery. If a banker pays a cheque to which the *signature* of the drawer has been forged, the banker must bear the loss, as he is supposed to know the signatures of his customers. But it was decided in *Young* v. *Grote* (1827) that if the customer draws a cheque negligently and leaves spaces which can be utilized for the purpose of fraudulent alteration, then if the cheque is altered the customer must bear the loss. As regards a forged indorsement, however, the rule is different; for the Act specially provides that, if the banker pays a cheque bearing a forged indorsement, in good faith and in the ordinary course of business, he is not liable and the loss falls on the true owner, who may frequently be the customer. This applies to bankers only, and it was laid down in the case of *Ogden* v. *Benas* (1874) that a third person who cashes a cheque on which the *indorsement* is forged is liable to refund to the rightful owner the money he received from the banker when it was honoured. Thus, *A* draws a cheque in favour of *B*; *C* steals it and forges *B's* signature in indorsing it and cashes it with *D*, a tradesman; *D* pays the cheque into his own bank for collection and the cheque is duly honoured by *A's* banker. On discovery of the forgery, *D* must refund to *A* the money he received from *A's* banker when the cheque was honoured. In *Banque Belge pour L'Étranger* v. *Hambrouck* (1921), where a cheque was obtained by fraud and the proceeds thereof transferred without consideration, it was held that the transferee holds no better title than the fraudulent holder had.

But the difference between forgery and fraud in relation to bills must be clearly borne in mind, for forgery is the wrongful signing of the instrument, whereas fraud may consist of any unauthorized alteration of the instrument, e.g., raising the amount of a cheque.

Crossed Cheques.

Where a cheque bears across its face the words "and Company" or any abbreviation thereof between two parallel transverse lines, or two parallel transverse lines simply, in either case with or without the words "not negotiable," such addition

(*d*) See *post*, p. 120.

constitutes a crossing, and the cheque is crossed *generally*. Where the cheque bears across its face the name of a banker, with or without the parallel lines or the words " Not negotiable," it is crossed *specially*, and to that particular banker.

The effect of a general crossing is that the paying banker must pay the amount of the cheque to a banker, and of a special crossing that he must pay the amount to the banker named or to his agent for collection. In no case may a crossed cheque be cashed over the counter, or a specially crossed cheque paid to anyone other than to the banker named, otherwise a banker will render himself liable to the true owner in case of loss. On the other hand, an open (or uncrossed) cheque may be so paid, if in order, to the bearer or payee.

A crossing is a material part of a cheque and may not be altered by anyone in any way except as is authorized by the Act. For this reason a cheque on which the words " not negotiable " have been crossed out should not be paid. Similarly a banker should strongly discourage the practice of " opening " a crossed cheque, whereby it has become customary for a drawer to cancel the effect of a crossing by writing on the cheque the words " Please pay cash," followed by his signature or initials. Should a banker decide to act on the alteration, the initials of the drawer should not be accepted, and a signature should be obtained. The practice has no legal sanction, and exposes a banker to several possible dangers. A banker is not liable in the case of any alteration in a crossing if such alteration or obliteration is not apparent.

The drawer of a cheque may cross it generally or specially, and if the cheque is uncrossed, the holder may cross it generally or specially, or convert a general crossing into a special one. Further, he may in either case add the words " not negotiable," which will take away the negotiable character of the cheque. Where a cheque is crossed specially, the banker to whom it is crossed may cross it specially *to another banker for collection.*

The words in italics deserve attention, for section 79 (1) of the Act prohibits payment of a cheque crossed by two bankers unless one is acting as agent for the other. Also if an uncrossed cheque or a cheque crossed generally is sent to a banker for collection, he may cross it specially to himself.

Section 82 of the Act is of very great importance in this connection with crossed cheques.

This section has been amplified by the Bills of Exchange (Crossed Cheques) Act, 1906, which now protects a banker even if he places the amount of a cheque to the customer's credit before he has actually collected the proceeds. The combined effect of the sections is that whereas formerly a banker, who credited

cheques as cash before receiving the proceeds, was regarded as a holder for value, and as such liable for conversion in the case of defects in the title of his customer, he is now regarded simply as an agent of his customer for collection, and is not liable in case of defects.

The section is, however, very strictly construed, and several important cases have been decided in connection therewith. The various conditions must be rigidly fulfilled before the banker can claim to be protected. He would be guilty of negligence if he collected cheques marked " account payee " for other than the named payee, or if he omitted to notice that the indorsement was in order. The term " customer " is not defined in the Act, but it is applied presumably to anyone who has an account of some kind with the banker. The banker should, under no circumstances, collect cheques for a stranger, or even for a new customer who has not yet been reasonably introduced. The section will not apply to documents for payment, drawn on a banker, which do not comply with the legal requirements of a cheque, as for example orders, the payment of which is made dependent on the signing of a receipt. The cheques must be crossed before they are paid in for collection, and a crossing, either general or special, by the banker himself, will not protect him. As to whether the customer has a right to draw against the amount before the banker has collected it is at present doubtful.

Termination of Authority to Pay.

When a customer has issued a cheque, the banker's authority to pay it may be terminated in several ways—

(1) *By countermand of payment.* It was held in *Curtice* v. *London City & Midland Bank* (1908) that this may be done even by telegram, if authenticated.

(2) *By notice of the customer's death.* But it was held in *Backhouse* v. *Charlton* (1878) that, where a firm consists of several members, the death of one does not cancel the authority of the survivors to draw cheques on the account of the firm.

(3) *By notice that the customer has committed an available act of bankruptcy,* or by the making of a receiving order against the customer.

(4) *By notice of the customer's lunacy.*

(5) *By service of a garnishee order nisi,* which ties up the whole of the credit balance of the customer, even though greatly in excess of the amount of the judgment debt. Unpaid cheques drawn *before* the date of service cannot then be cashed.

The bankruptcy or winding-up of the bank terminates the relationship as between banker and customer.

"Account Payee."

It is frequently found in practice that the words "A/c payee" or "Account A.B., etc.," are added to the crossing on the face of a cheque. These words have no legal effect as part of a crossing, as they are not authorized by the Bills of Exchange Act, 1882, and they do not therefore affect the negotiability of an order or bearer cheque. Nevertheless, disregard of such words would undoubtedly constitute negligence sufficient to deprive a collecting banker of the protection afforded to him by section 82 of the Act, and he should therefore see that in all such cases the proceeds are correctly applied to the account of the payee. A paying banker may, however, disregard such words, as it is no part of his duty to follow the money once he has paid it to the collecting banker.

Sometimes, however, an open cheque is presented to a paying banker for payment bearing the words, "Account payee only," with or without the addition of the words, "Not transferable." In such a case payment should be refused, and the cheque marked "Form of cheque irregular."

Post-dating.

A post-dated cheque bearing a twopenny stamp is a valid negotiable instrument under section 13 (2) of the Bills of Exchange Act, 1882, but, as it is a bill of exchange not payable on demand, it should, strictly speaking, bear an *ad valorem* impressed stamp in accordance with the provisions of the Stamp Act. Thus, although anyone taking such an instrument has a good title thereto, and its negotiability is not impaired because it is post-dated, it would seem that a person who negotiates it before its date is liable for stamp duty in accordance with the Stamp Act. On the other hand, as no cause for action could arise on a post-dated cheque before its date, it is doubtful whether the liability for extra stamp duty could be upheld.

With regard to the paying banker, he would lose his statutory protection if he paid such a cheque before its date, and would be liable to the drawer in the event of its having been paid under a forged endorsement. In this connection a further danger arises in that the banker who has paid such a cheque is unable to debit his customer's account with the amount until the date of the cheque, but in the meantime the drawer may stop payment, and the banker would be compelled to bear the loss.

BANK NOTES

Bank notes are promissory notes, payable to bearer on demand, issued by a banker. They are not stamped, and they differ

from ordinary promissory notes in that (*a*) they may be re-issued after payment, although actually they are not re-issued; (*b*) they are issued under licence by certain authorized persons only, and for certain fixed round sums; (*c*) their issue is limited by the law of the land; (*d*) they are invariably made payable to bearer; (*e*) they are never barred by the Statutes of Limitations; (*f*) they generally form part of the currency of the country (as in the case of Bank of England notes), and are freely accepted.

In England, the Bank of England has a monopoly of the right of note issue, and by the Bank of England Act, 1833, its notes were made legal tender in England and Wales for the payment of any amount *above* £5, except by the Bank itself or its branches. They are not, however, legal tender in Scotland or Ireland.

Bank of England notes are issued for various multiples of £5 and £10, but none are less than £5.

In Scotland and Ireland, bank notes are issued by practically all the banking institutions, but their notes are not legal tender in the respective countries.

STAMPING

By the Stamp Act, 1891, and various amending acts which have since been passed, the last being the Finance Act, 1918, bills of exchange, promissory notes, and cheques are required to be legally stamped before they are valid and legally enforceable. The stamp duties are as follow:—

Bills of Exchange

(1) When payable on demand, or at sight, or on presentation, or not exceeding three days after date or sight, for any amount . . . . 2*d*.

In the case of inland bills this stamp must be adhesive or impressed. On foreign bills this stamp *must* be adhesive, and may consist of (*a*) an ordinary foreign bill stamp; (*b*) a twopenny postage stamp; or (*c*) two penny postage stamps.

(2) On all others—

Where the amount does not exceed £10	2*d*.
Where it exceeds £10 and does not exceed £25	3*d*.
,, ,, ,, £25 ,, ,, ,, ,, £50	6*d*.
,, ,, ,, £50 ,, ,, ,, ,, £75	9*d*.
,, ,, ,, £75 ,, ,, ,, ,, £100	1*s*.
,, ,, ,, £100, for each £100 or any part thereof . .	1*s*.

Inland bills under this heading must be drawn on impressed stamp paper; foreign bills must be stamped with *adhesive foreign bill stamps*.

Exception: (Finance Act, 1899, Section 10.)

Bills, other than those under (1), drawn and expressed to be payable out of the United Kingdom, but actually paid, or indorsed or negotiated in any manner within the United Kingdom, are stamped as inland bills if the amount of the bill does not exceed £50, but

Where it exceeds £50 and does not exceed £100 . . .	6*d*.
Where it exceeds £100, for every £100 or part thereof . .	6*d*.

PROMISSORY NOTES

Inland promissory notes, whether payable on demand or not, must bear *ad valorem impressed* stamps. Foreign notes must bear *adhesive* "foreign bill or note stamps" in accordance with Schedule A (2) given above.

CHEQUES

For any amount, adhesive or impressed stamps . . . . . 2*d.*

General Duties in regard to Stamping.

The *ad valorem* stamp duty on inland bills must be impressed thereon before issue by the drawer. Usually inland bills on demand are also drawn on impressed-stamp paper. If adhesive stamps are used, they should be affixed and properly cancelled by the drawer, but if he does not do so the person to whom the instrument is presented for payment should affix and cancel the necessary stamp, charging the amount against the drawer or deducting it from the amount of the bill. A foreign bill or note must be properly stamped by the first person into whose hands the instrument comes on its arrival in this country, and such person renders himself liable to a penalty if he negotiates a foreign bill without first effectively stamping it. An instrument on which the duty is required to be denoted by adhesive stamps is not effectively stamped until such stamps are properly cancelled, and the omission of any holder to cancel the stamps where he is required to do so renders him liable to a penalty.

If, at the time a bill or note is received by a holder, it appears to have been effectively stamped, he may deem it to be properly stamped although in fact the stamps may have been affixed by the wrong person.

In the case of a bill drawn abroad in foreign currency, the stamp duty is to be calculated according to the rate of exchange for demand drafts current on the date of the bill, unless the instrument contains a statement of the current rate of exchange and it is stamped in accordance with that statement.

A bill is not invalid because it does not conform to foreign stamp laws, and only English stamp laws need be considered for legal purposes in this country.

Where a bill or note is payable with interest, only the principal need be taken into account in computing the stamp duty, unless the amount of interest is stated as a fixed sum.

Bills in a set require to be stamped on one of the parts only, the other parts being exempt provided they are not negotiated apart from the stamped bill. If the stamped part is lost, another part, although not stamped, may be admitted in evidence to prove the contents of the stamped part.

For stamping purposes the Channel Islands and the Isle of Man are deemed to be foreign countries.

CHAPTER 4

SALE OF GOODS

Reference should also be made to the following :—

APPENDIX D.—Factors Act, 1889, page 364.

APPENDIX E.—Sale of Goods Act, 1893, page 368.

Until the Sale of Goods Act, 1893, was passed, the law relating to the sale of goods was contained in many statutes and a large number of decided cases. This ill-digested mass was arranged and codified in the Act of 1893, which in this chapter will be referred to as " the Act."

The particular sections will only occasionally be mentioned, so that reference must be made to the Act itself, which is reprinted in the Appendix.

The sale of goods, being one of the most common kinds of contracts, is very important, and mercantile persons should be well acquainted with the law on the subject. The general principles of contract already considered in Chapter 1 apply to the sale of goods, and the present chapter must therefore be read in conjunction therewith. An agreement relating to the sale of any goods, wares or merchandise does not require stamping.

Definitions.

The Act defines " goods " as including all chattels personal, other than things in action and money.

The term includes emblements (that is, such vegetable products as are the *annual* results of agricultural labour), industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. By " specific goods " is meant goods identified and agreed upon at the time a contract of sale is made. A " contract of sale " is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price ; so that a contract of sale includes an agreement to sell as well as a sale. Where under the contract of

sale the property in the goods is transferred from the seller to the buyer, the contract is called a *sale* ; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called an *agreement to sell*. By " property " is meant the complete ownership in the goods the subject-matter of the contract. It means the general property in the goods, and not merely a special property, such as the limited or special state which is termed " possession." The distinction between a sale and an agreement to sell may be of importance, for if the goods are actually sold the property passes at once ; but, if there is only an agreement to sell, it will not become a sale until the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. By " delivery " is meant the voluntary transfer of *possession* from one person to another.

Capacity to Contract.

The question of capacity to enter into contracts has been fully considered in Chapter 1.

The Sale.

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them in accordance with the terms of the contract ; for, unless otherwise agreed, as, for example, by credit being given, delivery of the goods and payment of the price are concurrent conditions. Whether it is for the buyer to collect the goods or for the seller to send them to him depends in each case on the contract.

Place of Delivery.—Apart from any express or implied contract, the place of delivery is the seller's place of business or, if he has none, his residence. But if the sale is of specific goods, which to the knowledge of the parties are in some other place, then that is the place of delivery. Where the goods at the time of sale are in the possession of a third person, there is no delivery unless and until the third person acknowledges to the buyer that he holds the goods on his behalf ; but this rule does not affect the right which may have passed by the transfer of any document of title to the goods, e.g., dock warrants.

Instructions as to Delivery.—Where the seller is authorized or required to send the goods to the buyer, delivery of the goods to a common carrier for the purpose of transmission to the buyer is *primâ facie* deemed a delivery of the goods to the buyer. For this purpose the post office is not deemed to be a common carrier, and therefore delivery to the post office does not constitute

delivery to the purchaser, unless sent by post at his request. The above rule is subject to certain conditions as to contracts with the carrier and, if for sea transit, as to insuring the goods, as to which Section 32 of the Act should be consulted. Where the seller has agreed to deliver the goods at his own risk at a place other than the place where they are when sold, the buyer, unless otherwise agreed, takes any risk of deterioration necessarily incident to the course of transit.

Examination of Goods.—Where goods are delivered which the buyer has not previously examined, he is allowed a reasonable opportunity of examining them in order to ascertain whether they are in conformity with the contract. He must then accept or reject them accordingly. He is deemed to have accepted the goods when he intimates that fact to the seller, or where he does any act in relation to them which is inconsistent with the ownership of the seller, or if he retains them beyond a reasonable time without intimating to the seller that he rejects them. If he rejects them, having the right to do so, he is not bound to return them to the seller ; it is sufficient if he intimates to the seller that he rejects them. Where the seller is ready and willing to deliver the goods, and he requests the buyer to take delivery, the buyer is liable to the seller for any loss occasioned by his neglect or refusal to take delivery within a reasonable time, and also for a reasonable charge for the care and custody of the goods ; and if the refusal or neglect amounts to a repudiation of the contract the seller may treat it as at an end, freeing himself from all liability and suing for damages if he chooses.

Delivery of Larger or Smaller Quantity.—If the seller delivers to the buyer a quantity of goods substantially less than he contracted to sell, the buyer may reject them ; but, if he accepts them, he must pay for them at the contract rate. Where the seller delivers a substantially larger quantity than contracted for, the buyer may accept those included in the contract and reject the rest, or he may reject the whole. If he should accept the whole of the goods so delivered he must pay for them at the contract rate. Similarly, where goods are delivered mixed with goods of a different description from those included in the contract, the buyer may accept those which are in accordance with the contract and reject the rest, or he may reject the whole. But all these provisions are subject to any usage of trade, special agreement, or course of dealing between the parties. It is quite usual for quantities to be stated as " or thereabouts " or " more or less." In *Payne and Routh* v. *Lillico & Sons* (1920), there was a contract for 4,000 tons of meal within " 2 per cent. more or less." The sellers considerably exceeded the allowance and the buyers refused to take delivery. It was held (1) that the buyers

were entitled to refuse, and the court would not make further variation, (2) that, where a margin is expressly limited for variation, it should be adhered to unless there is no more than a trifling amount, which may be disregarded.

Unless otherwise agreed, the buyer is not bound to accept delivery by instalments. But, where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

When the "Property" Passes.

As mentioned above, where the goods are actually delivered by the seller to the buyer, or where a third person acknowledges to the buyer that he holds the goods on his behalf, there is, as a rule, no doubt as to the time when the property passes. But, although the majority of contracts for the sale of goods are straightforward and simple, there are many in which this important question is not so easily answered. It is important, as on it depend the relative rights of the seller and buyer in the event of any loss happening to the goods; for, in the absence of contrary agreement, the goods are at the risk of the person in whom the property is vested, provided the other party is not at fault, the legal maxim being: *res perit domino* (where goods perish the loss falls on the owner). Very often the intention of the parties can be gathered either from the contract itself or from the circumstances under which it was entered into.

In the absence of any expressed or implied intention, the Act lays down certain rules—

Specific Goods in a Deliverable State.—Where there is an unconditional contract for the sale of specified goods in a deliverable state, the property passes to the buyer when the contract is made, and it is immaterial whether payment or delivery be postponed, e.g., *A* goes to a shop and buys a certain book. On the completion of the transaction the book is his, the property having passed. In the case of *Tarling* v. *Baxter* (1827), *B* agreed to sell to *C* a certain stack of hay, to be paid for on the 4th February ensuing, the stack to be removed in the May following. It was held that the property passed immediately.

Specific Goods not in a Deliverable State.—Where there is a

contract for the sale of specific goods and the seller is bound to do something to the goods in order to put them into a deliverable state, the property does not pass until the thing be done and the buyer has been notified thereof, e.g., in *Acraman* v. *Morrice* (1849), *D* had contracted for the purchase of the trunks of certain trees. The custom of the trade was that the buyer should measure and mark the portions he wanted, and that the seller should cut off the rejected parts. The buyer had accordingly measured and marked the trees, but it was held that no property passed until the seller had actually severed the rejected parts.

Specific Goods in Deliverable State to be weighed, etc.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do something else to them for the purpose of ascertaining the price, the property does not pass until the act or thing is done and the buyer has been notified thereof, e.g., in *Simmons* v. *Swift* (1826), *E* bought a specified stack of bark, at a certain price per ton. A portion was weighed and taken away. It was held that the property in the remainder had not passed because it was still to be weighed. But in *Furley* v. *Bates* (1865), where the *buyer* was to weigh the goods during the course of transit, it was held that the property did pass.

Goods on "Sale or Return."—When goods are delivered to the buyer on approval, or "on sale or return," or other similar terms, the property therein passes—

(*a*) When the buyer signifies his approval or acceptance, or does any other act adopting the transaction.

(*b*) If he retains the goods beyond the time fixed or, if no time is fixed, then beyond a reasonable time, and does not signify either acceptance or rejection to the seller, what would be a reasonable time would be a question of fact depending on the circumstances.

Supposing *F* orders some books on approval and the shopkeeper sends six volumes and says they must not be retained more than three days if he does not approve of them; *F* retains them for three weeks and does not notify his decision to the shopkeeper. He is deemed to have approved them and the property has passed. As a further example of an "act adopting the transaction" may be cited the case of *Kirkham* v. *Attenborough* (1897), where *G* the plaintiff, a jeweller, sent goods to *H* on "sale or return." *H* pawned the goods with the defendant. It was held that by the act of pawning *H* had adopted the transaction and the property had passed to him, so that the defendant had a good title.

Sale by Description.—Where there is a contract for the sale of unascertained or future goods by description, and goods of that

description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property thereupon passes to the buyer. Such assent may be express or implied, or may be given either before or after the appropriation is made. The seller is deemed to have unconditionally appropriated the goods if he delivers them to a carrier or other person for the purpose of transmission to the buyer, providing he has not reserved the right of disposal. In the case of *Calcutta Co.* v. *De Mattos* (1863), *K* contracted to deliver coals at Rangoon, and for that purpose coals were shipped from London to that port. *K* then, in accordance with the terms of the contract, gave the bill of lading and the policy of insurance to the C. Company. It was held that as soon as *K*, in pursuance of the stipulations, gave the company the policy and bill of lading, he irrevocably appropriated to the contract the goods that were thus shipped, so that what had been an agreement to supply any coals answering the description became an agreement relating to those coals only.

Seller's Reservation as to Disposal.—The seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods, the property in them does not pass until the conditions imposed are fulfilled. Where goods are shipped and by the bill of lading they are deliverable to the seller or his agent, the seller is *primâ facie* deemed to reserve the right of disposal; and where the seller draws on the buyer for the price and transmits a bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not accept the bill of exchange; and, even though he wrongfully retains the bill of lading, the property in the goods does not pass to him.

Non-existence of Subject-matter of Sale.—Where there is a *contract for the sale of specific goods* and the goods without the knowledge of the seller have perished *at the time when the contract is made*, the contract is void. Thus, in *Couturier* v. *Hastie* (1856), the two parties contracted as to a cargo which was supposed to be on the sea. It subsequently transpired that it had ceased to exist owing to perils of the sea, and it was held that the contract was void.

Where there is an *agreement to sell specific goods*, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided. In *Elphick* v. *Barnes* (1880), *A* bought a horse on sale or return and was allowed eight days in which to

return it. It died within that time without his fault, and it was held that the property had not passed and the seller could not sue for the price.

To sum up on the question as to when the property in goods passes, it may be taken as a general rule that " the property will pass where there is a valid and complete contract, provided that the goods are in existence, and no act remains to be done to them, or the buyer has acquired possession of the goods." (*e*)

The Price.

The price may be fixed by the contract of sale, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties or, if not so determined, the buyer must pay a reasonable price, and what that will be is of course a question of fact dependent on the particular circumstances. But if there is an agreement to sell goods in the terms that the price is to be fixed by the valuation of a third party who does not or cannot make such valuation, the agreement is avoided. If, however, the goods or part thereof have been delivered to and appropriated by the buyer, he must pay a reasonable price. Of course, if the third party should be prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault. *Price* must be money and in sterling where contracts are made to sell goods ; overseas the price may be in foreign currency, but that is entirely subject to the contract. If goods are transferred by one person to another without any price being paid or other consideration being given or intended, such a transaction is a gift. An *agreement* for a gift has no legal effect, and is unenforceable unless the person to whom the gift is made has received the chattel or goods or the contract is made by deed.

Formalities.

This matter has been referred to under the GENERAL LAW OF CONTRACT, (*f*) but it needs much more consideration. Originally enacted by the Statute of Frauds, Section 4, and extended by Lord Tenterden's Act, the formalities necessary in order to render an executory contract of sale enforceable at law are now re-enacted with amplifications by Section 4 of the Sale of Goods Act, 1893.

The importance of this section is very great, and it is therefore printed here in full—

(*e*) INDERMAUR'S *Common Law*, 12th Edn., p. 102.
(*f*) See *ante*, p. 16.

(1) A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

(3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not.

(4) The provisions of this section do not apply to Scotland.

Detailed Examination of Section 4 of Sale of Goods Act.

It will be seen, therefore, that a contract for the sale of goods of or above the value of £10 is not enforceable by action unless any one of several conditions be observed. These conditions are—

(*a*) *Part performance*, which can be either—
  (i) accepting and receiving part of the goods, or
  (ii) part payment of the price;
(*b*) Something given in *earnest*; or
(*c*) *A memorandum* signed by the party to be charged, or his agent.

It is sometimes difficult to decide whether a contract is for the sale of goods or for work and labour done. Thus, in *Clay* v. *Yates* (1856), where a printer undertook to print a work and to supply the necessary materials, it was decided that it was a contract for work and labour and not of sale. A very important case in this connection was *Lee* v. *Griffin* (1861), where a dentist brought an action for the price of artificial teeth, there being no memorandum sufficient to satisfy the Statute of Frauds. The Court decided that it was a contract of sale, and Blackburn J. laid down the following rule—"If the contract be such that it will result in the sale of a chattel, the proper form of action, if the other party refuses to accept the article when made, would be for not accepting. But if work and labour be bestowed in such a manner that the result would not be anything which could properly be said to be the subject of sale, then an action for work and labour is the proper remedy."

Value.—If a considerable number of articles each less than

£10 in value be purchased from the same tradesman, then if the total value is £10 or over the purchase falls within the section. But this rule does not apply at an auction sale, as then each lot is reckoned the subject of a separate contract of sale.

(*a*) *Part Performance :* (i) *Acceptance and Receipt.* This is a matter which requires a certain amount of consideration, for " acceptance " here does not bear its ordinary meaning. " Acceptance " is laid down in the Act to mean any act of the buyer in relation to the goods which recognizes a pre-existing contract of sale, whether there is acceptance in *performance* of the contract or not. So that although the buyer may, with every right, reject the goods if they do not satisfy the agreement made, there may yet be sufficient acceptance and receipt to satisfy the statute and show that there is a pre-existing contract of sale. A leading case on this point is *Page* v. *Morgan* (1885), where *A* has sold to *B* certain wheat, which was sent in sacks by barge to *B's* mill. A small portion was taken out of the barge by *B's* foreman into the mill and examined, and *B* then rejected the whole on the ground that it was not up to sample. It was held that the taking part of the wheat into the mill to see if it was up to sample constituted acceptance and receipt sufficient to satisfy the statute. In a later case, *Abbott* v. *Wolsey* (1895), where hay was purchased, the circumstances were somewhat similar. The defendant, when it was delivered, took a sample and examined it and said that it was not up to sample and he would not have it. It was held that there was sufficient evidence of an act by the buyer which recognized a pre-existing contract of sale, and that there had been an acceptance sufficient to satisfy the statute. But in *Taylor* v. *Smith* (1893), where the defendant merely looked at the goods after they arrived at his wharf but did not handle them, it was held that there was no acceptance.

If the buyer takes the goods with him, or sends a carrier for them, there is receipt, and so also is there where he re-sells or attempts to re-sell the goods before they arrive, or if he has agreed with the seller that the latter shall hold them for him. For instance, in *Elmore* v. *Stone* (1809), *A* bought a horse from *B*, who was a livery-keeper, and he left the horse at livery with *B*. It was held that he had received it. Similarly, if goods are held by a third party and it is agreed that the third party shall hold them for the buyer, that is sufficient receipt.

Part Performance : (ii) *Part Payment.* An actual payment is necessary, but it may consist of a bill of exchange or promissory note, which amounts to payment until dishonoured. But if one of the terms of the contract should be the retention of money owing by the seller to the buyer, that is not " part payment " ;

neither is the North country custom of " striking off " a bargain by drawing the edge of a shilling over the hand of the seller and not paying him the money ; nor the prevalent custom amongst farmers and in the cattle trade of shaking hands on a bargain. The parties may feel morally bound by the act, but it has no legal significance.

(*b*) *Earnest.* This is not part payment but something given, irrespective of the price, by the buyer to the seller to mark the completion of a bargain. It is a custom rarely found nowadays.

(*c*) *Memorandum.* What is a sufficient memorandum has already been fully considered under the GENERAL LAW OF CONTRACT. (*g*)

Rights of the Buyer.

The buyer has two rights—

(1) To delivery of the goods bought ;

(2) To observance of any conditions and warranties.

The question of delivery has already been considered under the title of SALE. (*h*)

There are certain implied conditions and warranties attendant on every sale of goods ; but, apart from these and from any express terms made, it is the duty of the buyer to satisfy himself as to the quality of the goods or of their fitness for any particular purpose before he concludes the contract, the maxim being *caveat emptor* (let the buyer beware).

A warranty is an agreement made contemporaneously with the contract with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for *damages*, but not a right to reject the goods and treat the contract as repudiated. It may be made after the time of making the agreement but, if so, it requires either to be under seal or to be supported by consideration.

But although its breach does not vitiate the contract the buyer may—

(*a*) Set up against the seller the breach of warranty in diminution or extinction of the price, or

(*b*) Maintain an action against the seller for damages for the breach of warranty,

and if necessary he may adopt both remedies.

A condition is a representation that a certain state of things exists, or will exist, on the truth of which depends the existence

(*g*) See *ante*, pp. 17-19.
(*h*) See *ante*, p. 125.

of the contract. It is an essential term of the contract, and a breach of the condition entitles the buyer to reject the goods and treat the contract as at an end.

Both warranties and conditions fall under the generic term *stipulation*, and it is not always an easy matter to determine whether a stipulation is one or the other. BOWEN L.J. in *Bentsen* v. *Taylor* (1893) said: "There is no way of deciding the question except by looking at the contract in the light of the surrounding circumstances, and then making up one's mind whether the intention of the parties will best be carried out by treating the promise as a warranty sounding only in damages, or as a condition precedent, by the failure to perform which the other party is relieved of his liability." The Act states that the question depends in each case on the construction of the contract, and that a stipulation, even though termed a warranty, may be a condition. Where there is a breach of a condition the buyer may elect, if he desires, to treat it as a breach of warranty and not repudiate the contract. But where a contract of sale is not severable and the buyer has accepted the goods, or part of them, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect.

Breach of a stipulation should not be confused with *misrepresentation*, which is a false statement made before or at the time of the contract and which induces the contract. It gives the injured party the right to repudiate the contract.

The Implied Warranties on a sale of goods are as follows—

(1) That the buyer shall have and enjoy quiet possession of the goods, and that they are free from any charge or encumbrance in favour of third parties, which is not declared or which is unknown to the buyer at the time of the making of the contract (Sale of Goods Act, 1893);

(2) On the sale, or in the contract for sale, of any goods to which a trade-mark, or mark, or trade description has been applied, that the mark is a genuine trade-mark and not forged or falsely applied, or that the trade description is not a false trade description (Merchandise Marks Act, 1887);

(3) On the sale of an article for use as food for cattle or poultry, that the article is suitable for feeding purposes; and the seller of manufactured or artificially prepared fertilizers or feeding-stuffs is bound to give a special invoice to the buyer which is a warranty of the state-

ments contained in it (Fertilizers and Feeding Stuffs Act, 1906);

(4) On a contract for the sale of an anchor exceeding 168 lb. in weight, or of a chain cable, that it has been properly tested and stamped (Anchors and Chain Cables Act, 1899);

(5) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade (Sale of Goods Act, 1893). The particular custom must be proved by evidence to that effect; and there is, of course, no implied warranty where negatived or varied by the course of dealing or usage binding both parties.

There is an *exception* affecting these implied warranties, where the warranty is excluded if so expressed in writing, signed by or on behalf of the vendor, and at the time of the sale or contract delivered to and accepted by the buyer. Further, it should be noted that if a particular fact is known to the buyer at the time of the sale or might have been so known by him, a warranty will not protect him. For instance, where a horse is warranted sound but is wanting an ear or a tail.

Apart from warranty it is the duty of a seller of goods which he knows to be dangerous and the buyer possibly ignorant thereof, to warn him that special care should be taken; otherwise, as was held in *Clarke* v. *Army and Navy Co-operative Society* (1903), he may be held liable in damages if injury should result. If goods are sold " with all faults," the buyer cannot sue the seller for any defects unless the seller has used artifice to prevent their discovery.

The Implied Conditions on a sale of goods are as follows :—

(1) In the case of a *sale*, that the seller has a *right* to sell the goods; and in the case of an *agreement to sell*, that he *will have a right* at the time when the property is to pass, unless the circumstances of the contract are such as to show a different intention.

In a purchase from a sheriff or a pawnbroker, if the buyer knows he is such, the transfer is only of such rights as the vendor himself possessed. Sometimes even the question of the right to sell raises a nice point. In *Niblett Ltd.* v. *Confectioners' Materials Co. Ltd.* (1920), where, without the knowledge of the buyer or seller, goods were labelled in such a way that they could not in their then condition be resold without infringing the trade mark of a third party, it was held that the provisions of Section 12 of the Act do not entitle the buyer to reject the goods.

(2) In a contract for the sale of goods *by description*, that the

goods shall correspond with the description. If the sale should be by sample as well as by description, it is not sufficient that the bulk corresponds with the sample if not also with the description.

Thus, in *Nichol* v. *Godts* (1854), *A* contracted to sell to *B* "refined foreign rape oil, warranted only equal to sample." The oil was equal to sample, but was not "refined foreign rape oil"; and it was decided that the condition was not satisfied.

Where goods are *bought* by description from a seller who deals in goods of that description, whether he be the manufacturer or not, there is an implied condition that they shall be of merchantable quality. But if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed.

(3) Where the buyer makes known, either expressly or by implication, to the seller the *particular purpose* for which the goods are required *so as to show that he relies on the seller's skill and judgment*, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not) there is an implied condition that the goods shall be reasonably fit for such purpose. But if the contract should be for the sale of a specified article under its patent or other trade name, there is no such implied condition.

In the case of *Randall* v. *Newson* (1877), *A* supplied to *B* a carriage pole which on use proved to be defective and unfit for the purpose intended. It was held that *A* was liable for the damage caused to *B* by reason of the defective pole. Similarly, in *Priest* v. *Last* (1903), where *C* bought from *D*, a chemist, a hot-water bottle which burst and caused damage, *D* was held liable. In *Geddling* v. *Marsh* (1920), the plaintiff bought mineral waters from defendant, who charged a penny on each bottle, which was refundable on return of the empty bottles. One bottle was not reasonably fit for its purpose, and burst on being handled by the plaintiff and injured him. It was held that, even if the bottles were not sold, only hired, they were supplied under a contract of sale within Section 14 of the Act, with an implied condition that they were reasonably fit for the purpose for which required; and that, in the absence of negligence, the plaintiff was entitled to damages. The same rule applies to latent defects, e.g., in *Frost* v. *Aylesbury Dairy Co.* (1905), where milk was supplied containing disease germs, the existence of which could only be discovered by prolonged examination, the seller was held liable.

In the case of *Drummond* v. *Van Ingen* (1887), *A* gave an order to *B*, a cloth manufacturer, to supply worsted coatings equal to sample in weight and quality, and *B* knew that *A* in-

tended to re-sell the cloth to tailors. The material supplied was equal to sample, but was what is technically known as " slippery " and useless for the purpose intended, being therefore unmerchantable. The defect was not apparent by an ordinary examination of the material, but it was held that *A* could refuse to accept the material.

(4) In the case of a contract for sale *by sample*—

(*a*) That the bulk shall correspond with the sample in quality

(*b*) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

(*c*) That the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

The case of *Drummond* v. *Van Ingen*, cited above, is apposite under this heading also. It should be borne in mind that a sale by sample does not necessarily take place whenever a sample is shown; there must be a term in the contract, express or implied, to that effect.

When Breach of Condition is treated as Breach of Warranty.—Unless there is a contrary expression in the contract, the breach of a condition must be treated as a breach of a warranty in the following cases—

(1) Where the contract is not severable and the buyer has accepted the goods or part of them.

(2) Where the contract is for specific goods and the property in them has passed to the buyer.

Transfer of Title.

There is a legal maxim—*Nemo dat quod non habet* (no one can give what he has not got), so that where goods are sold by a person not the owner of them, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless—

(1) They are negotiable instruments. (*i*)

(2) The owner is, by his conduct, precluded from denying the seller's authority to sell.

(3) The transaction falls under the provisions of the Factors Acts or any enactment enabling the *apparent* owner of goods to dispose of them as if he were the true owner.

(4) The sale is under the order of a court of competent jurisdiction.

(5) The goods are sold in *market overt*, according to the usage of the market, and the buyer buys in good faith and

(*i*) See *ante*, p. 92.

without notice of any defect or want of title on the part of the seller.

(6) When the seller has a voidable title to the goods, but his title has not been avoided at the time of sale, the buyer acquires a good title, provided he buys the goods in good faith and without notice of the seller's defect of title.

(7) Where a person who has sold goods continues or is in possession of the goods, or of the documents of title thereto, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving in good faith and without notice of the previous sale, has the same effect as if the person who makes the delivery or transfer were expressly authorized by the owner of the goods to make the same.

(8) Where a person has bought or agreed to buy goods and he obtains, with the consent of the seller, possession of the goods or the documents of title thereto, the delivery or transfer by him, or by a mercantile agent acting for him, of the goods or the documents of title, under any sale, pledge, or other disposition thereof, to any person receiving them in good faith and without notice of any lien or other right of the original seller in respect of the goods, has the same effect as if the person making the delivery or transfer were a mercantile agent as defined by the Factors Acts in possession of the goods or documents of title with the consent of the owner.

Where the goods have been *stolen*, and the offender is prosecuted to conviction, the property in the goods revests in the person who was the owner, notwithstanding any intermediate dealing with them, whether by sale in *market overt* or otherwise. But if the goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in them does not by reason only of the conviction of the offender revest in the person who was the owner of the goods.

As against the offender himself, the owner, where the fraud does not amount to larceny, can recover the goods ; but as against anyone acquiring subsequently, he must show that he took them with notice of the fraud or otherwise in bad faith.

Sales in Market Overt.

By *market overt* is meant selling goods between the hours of sunset and sunrise in an open and legally constituted market,

instead of selling them privately. In the country, the market place or the place set apart by grant or custom for the sale of goods is usually the only market overt, but the term includes a modern market established under statutory powers.

In the City of London, however, a sale in *market overt* is any sale (except on Sundays) by a shopkeeper in an open shop of only such goods as the shopkeeper professes to trade in. The advantage of such a sale is, as mentioned above, that the seller can confer a title to goods which he could not have given by selling privately. But the advantages of *market overt* only apply where the buyer acts in good faith and without knowledge of any defect in the seller's title and the transaction fulfils all the conditions referred to above. In such a case, therefore, as that already mentioned, he obtains a title good against the whole world, with the exception that if the goods have been stolen and the thief is *prosecuted to conviction*, the property in the goods reverts to the true owner.

But this rule does not apply to the sale of horses, unless the horse shall have been exposed for sale for an hour between ten in the morning and sunset, and its accurate description, and that of the buyer and seller, entered in a book by the toll-keeper ; and even then if the horse has been stolen the owner may, within six months after the sale, recover it by paying to the buyer the amount the latter had paid for it.

The following are, therefore, exceptions to the application of market overt—

(1) In *Hargreave* v. *Spink* (1892) *A* had stolen some pearls which he offered to *B* for sale. *B* invited him upstairs to a showroom over the shop and there purchased the pearls. It was held that the transaction must not take place in a room above or behind the shop or behind a curtain, and it was stated that the shopkeeper must be the *seller* and not the buyer of the goods.

(2) In *Crane* v. *London Dock Co.* (1864), it was held that a sale by sample does not come within the rule. The bulk must be exposed, sold and delivered in the open market.

(3) Where goods are not of the nature usually traded in.

(4) Where goods belong to the Crown.

(5) Where the buyer knows the goods do not belong to the seller.

(6) Transactions in Scotland.

(7) Sales in auction rooms that are not open to public view.

(8) Stolen goods when the thief is prosecuted to conviction.

(9) The sale of horses.

Rights of Unpaid Seller.

The seller of goods is deemed to be an " unpaid seller "—

(*a*) When the whole of the price has not been paid or tendered.

(*b*) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

The term " seller " includes any person who is in the position of a seller, e.g., an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

The unpaid seller of goods has certain rights against the goods themselves—

(*I*) *Where the property in the goods has passed to the buyer.*—Notwithstanding that the property in the goods may have passed to the buyer, he has, by implication of law—

(*A*) A *lien* on the goods, i.e., a right to retain them for the price while he is in possession.

(*B*) In case of the insolvency of the buyer, a right of *stopping the goods in transitu* after he has parted with the possession and the goods are in the hands of a carrier.

(*C*) A right of *re-sale*, subject to certain conditions.

(*II*) *Where the property in the goods has not passed to the buyer.*—Where the property in the goods has not passed to the buyer, in addition to his other remedies, a right of *withholding delivery*, similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer.

I. RIGHTS OF UNPAID SELLER AGAINST THE GOODS WHERE PROPERTY HAS PASSED TO BUYER

(*A*) *Lien of the unpaid seller.*—The unpaid seller who is in possession of the goods is entitled to retain possession of them until payment or tender of the price, in the following cases—

(1) Where the goods have been sold without any stipulation as to credit.

(2) Where the goods have been sold on credit, but the term of credit has expired.

(3) Where the buyer becomes insolvent.

He may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. Where the unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder, unless

such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

He loses his lien or right of retention in the following cases—

(*a*) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer, without reserving the right of disposal of the goods ;

(*b*) When the buyer or his agent lawfully obtains possession of the goods ;

(*c*) By waiver of his rights ;

but he does not lose the rights by reason only that he has obtained judgment for the price of the goods.

(*B*) *Stoppage in transitu.*—When the buyer becomes insolvent, the unpaid seller has the right of stopping the goods and of resuming possession of them so long as they are on their way or in course of transit to the buyer, and he may retain them until payment or tender of the price, subject to the following rules—

(1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee, for purpose of transmission to the buyer, until the buyer or his agent takes delivery of them from such a carrier or bailee. But, if the buyer or his agent should obtain delivery of the goods before their arrival at the appointed destination, the transit is at an end.

It is sometimes difficult to say whether the buyer has obtained delivery, e.g., in the case of *Whitehead* v. *Anderson* (1842), the assignee of a bankrupt buyer boarded a vessel carrying a cargo of timber consigned to the buyer. He touched it and told the master of the ship that he was there to take possession of the cargo, but the master did not assent to hold the cargo accordingly. It was held that no constructive possession had arisen in the buyer, and that the right of stoppage *in transitu* had not ceased.

(2) If, after the arrival of the goods at the appointed destination, the carrier or bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end ; even though a further destination for the goods may have been indicated by the buyer.

Here again it is often difficult to say when the destination has been reached.

Lord Ellenborough stated in *Dixon* v. *Baldwen* (1804), "The goods had so far gotten to the end of their journey that they waited for new orders from the purchaser to put them again in motion . . . and that without such orders they would continue stationary." For example, in *Kendall* v. *Marshall* (1883), goods

were sent by the unpaid seller to a forwarding agent, who was instructed by the buyer as to the ultimate destination. It was decided that the right of stoppage *in transitu* was lost when the goods reached the agent.

(3) But if the buyer rejects the goods and the carrier or bailee continues in possession of them, the transit is not at an end, even if the seller has refused to receive them back.

(4) Where the carrier or bailee wrongfully refuses to deliver the goods to the buyer or his agent, the transit is at at end.

(5) When goods are delivered to a ship chartered by the buyer, it depends on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent for the buyer.

(6) Where part delivery of the goods has been made to the buyer or his agent, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

(7) The right of stoppage *in transitu* is exercised either by the seller taking actual possession of the goods or by giving notice to the carrier or bailee in whose possession the goods are. Such notice may be given to the person actually in possession or to his principal ; but, if to the principal, to be effectual the notice must be given at such time and under such circumstances that he may, by the exercise of reasonable diligence, communicate it to his servant or agent in time to prevent a delivery to the buyer. When such notice is given to the carrier or bailee he must re-deliver the goods to, or according to the directions of, the seller, who must pay the expenses of such re-delivery.

See also next paragraph as to how the right of stoppage *in transitu* may be defeated.

(*C*) *Re-Sale.*—The unpaid seller's right of lien, or retention, or stoppage *in transitu* is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto, provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes it in good faith and for valuable consideration, then if the last-mentioned transfer was by way of sale the seller's right is defeated ; and, if it was by way of pledge or other disposition for value, the seller's right can only be exercised subject to the rights of the transferee.

A contract of sale is not rescinded by the mere exercise by an unpaid seller of the above-mentioned rights; but—

(1) Where the unpaid seller who has exercised his rights re-sells the goods, the buyer acquires a good title thereto as against the original buyer.

(2) Where the goods are of a perishable nature, or where the seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(3) Where the seller expressly reserves a right of re-sale in case the buyer should make default and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

II. RIGHTS OF UNPAID SELLER AGAINST THE GOODS WHERE PROPERTY HAS NOT PASSED TO BUYER

In the cases where the property in the goods has not actually passed, the seller may, in the circumstances above referred to, withhold delivery of the goods. Where some goods under the contract have been delivered or the property in them has passed, but the property in the remainder has not yet passed, the seller may, similarly, withhold delivery of such remainder.

Remedies of the Seller.

The seller of goods may maintain an *action for the price*—

(*a*) If the property in the goods has passed to the buyer, who wrongfully neglects or refuses to pay according to the terms agreed.

(*b*) If, under the contract, the price is payable on a day certain, irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, although the property in the goods has not passed and the goods have not been appropriated to the contract.

The seller may maintain an *action for damages* where the buyer wrongfully neglects or refuses to accept and pay for the goods, and the measure of the damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract. Where there is an available market for the goods in question the measure of damages is, *prima facie*, to be ascertained by the difference between the contract price and the market or current price at the time when the goods ought to have been accepted or, if no time was fixed,

then at the time of the refusal to accept. In other circumstances, damages will be assessed in accordance with the general rules considered in Chapter 1. (*k*)

Remedies of the Buyer.

Action for Damages.—The buyer may maintain an action against the seller for damages where the seller wrongfully neglects or refuses to deliver the goods to the buyer. The measure of damages is on the same basis as that referred to above in relation to an action brought by the seller.

Specific Performance.—In an action for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods and paying damages. Such judgments or decrees are as a rule made only where the goods are of some peculiar value or unique property as, for example, an *objet de vertu* (i.e., an article of particular artistic merit).

Hire-purchase Agreements.

A very usual method of acquiring goods, particularly furniture, motor lorries, railway wagons, etc., is by what is known as the hire-purchase system. A person or firm agrees to buy certain goods and to pay so much a month or a quarter for a stated period, and when the agreed number of instalments which make up the full price has been paid, the property is to vest in the purchaser.

This sounds very simple, but a great deal depends upon the way in which hire-purchase agreements are drawn up. The contract may be such that the hirer of the goods is bound to carry out the transaction, or it may contain a clause that he may at any time return the goods or be asked to return them, or the hiring may be determined on the happening of certain events. If the agreement is worded in the former way, it is, in effect, simply a purchase by deferred payments, and the hirer could make a sale, pledge or other disposition of the goods, to a person taking in good faith and without notice, which would be valid and effectual ; in the latter cases, however, the sale being subject to a condition precedent, the hirer cannot give a title. Great care should, therefore, be exercised in drawing up such agreements. It should be noticed that a Hire-purchase Agreement if under hand only requires a 6*d*. stamp, but if it is under seal it requires a 10*s*. stamp.

(*k*) See *ante*, p. 67.

Interest on Overdue Accounts.

This is payable only from the date of a written demand for payment giving notice that interest will be claimed from the date of demand until payment. The words, " Interest will be charged on overdue accounts," often found on printed headings, is not of value until notice has been given as from a definite date. But if the heading stated, e.g., " Interest will be charged on all accounts unpaid after six months from date of delivery of the goods " it would be of effect. But even the former wording may have some value as indicating that accounts will not be allowed to run on indefinitely, and may help to justify a notice when it is given.

Sales by Auction.

In the case of a sale by auction—

(1) Where goods are put up for sale in lots, each lot is, *prima facie*, deemed the subject of a separate contract of sale.

(2) The sale is complete when the hammer falls, or on any other customary manner of announcing completion. Until such announcement, the bidder may retract his bid.

(3) When the sale is not notified to be subject to a right to bid on behalf of the seller, it is not lawful for him to bid or employ others to do so, or for the auctioneer knowingly to take any such bid ; but, where a right to bid is reserved, the seller, or any person on his behalf, may bid at the auction. Any sale contravening this rule may be treated as fraudulent by the buyer.

(4) A sale may be notified to be subject to a reserved or upset price.

For further consideration of auction sales the Law of Agency should be referred to. (*l*)

Sales by Post.

A large volume of business is nowadays transacted by what is termed " Mail Order," that is, where the vendors advertise that on receipt of the cash price they will send the goods which form the subject of the sale by post. In such transactions it is obviously the intention of both parties that the post shall be the means of communication, and it is probable, therefore, that delivery to the Post Office is equivalent to delivery to the purchaser, in which case, if the goods are not delivered by the Post Office, the purchaser would have no redress against the seller on proof that they had, in fact, been handed to the Post Office for delivery.

(*l*) See *ante*, pp. 86–88.

CHAPTER 5

LAW OF PARTNERSHIP

Reference should also be made to the following :—

APPENDIX F.—Partnership Act, 1890, page 385.

APPENDIX G.—Limited Partnership Act, 1907, page 395.

Partnership is the relation existing between persons who carry on a business in common with a view to profit ; and the principles of the law relating thereto will be found in the Partnership Act, 1890. It should be noted that there are three essentials in the formation of a partnership. There must be a business, it must be carried on in common, and it must be carried on with a view to profit ; so that an association of persons to form, for example, a club is not a partnership, nor is an association for trade protection or for any similar purpose where no business is to be carried on or no profits are intended to be made. It is not every combination of persons for the purpose of making profits, however, that is a partnership, and the Partnership Act gives the following exceptions—

(1) A joint stock company registered under the Companies Acts.

(2) A company incorporated by special Act of Parliament, or Letters Patent, or Royal Charter.

(3) A company engaged in working mines within the Stannaries. The Stannaries Court was an ancient court exercising jurisdiction over all mines and miners within the counties of Devon and Cornwall. This court was abolished in 1896 and its jurisdiction and powers transferred to the County Court of Cornwall. By a local custom, companies within the jurisdiction are allowed to be formed for working mines on what is known as the Cost Book System. These companies do not fall under the Companies Acts, 1908–17, nor are they regarded as Partnerships under the Partnership Act, 1890 ; they are governed by special Acts of 1869 and 1887.

Such associations are, therefore, not partnerships.

How Partnerships are formed.

A partnership may be formed by agreement of any kind, or may even be implied from the conduct of the parties; but, usually, there is a written agreement—which may or may not be under seal—called the Articles or Deed of Partnership, and this contains all the conditions, financial and otherwise, under which the parties agree to conduct their business. These Articles are conclusive as between the parties as to what their intention was when forming the partnership. The partners are, therefore, bound by the Articles as well as by any implied conditions which may have come into existence during the course of trading. The Partnership Act applies, in many cases, only where the Articles or implied conditions give no ruling. Where the partnership is to last for more than a year, and nothing has been done in pursuance of the agreement, it is essential that the agreement should be in writing, in accordance with the Statute of Frauds, and also where the partnership is to commence at a future date more than a year ahead. But where the agreement has been partly performed it was held in *Crowley* v. *O'Sullivan* (1900) that it need not be in writing.

A partnership cannot be formed for an illegal object. For example, in *O'Connor and Ould* v. *Ralston* (1920), a partnership was formed for betting purposes. It was held that such a partnership is not possible by English law, and therefore an action by such a partnership to recover money paid by the partnership in respect of bets will not lie. Nor can a partnership be formed for *any* purpose, although it can for most purposes. There are certain classes of business or profession which cannot be the subject of a partnership. For instance, it is not possible for two barristers to enter into a partnership with a view to practising at the Bar. In some cases, certain requisites have to be observed, such as that the partners are duly qualified, e.g., medical practitioners, or registration of particulars of each partner, e.g., moneylenders, otherwise the partnership would be *illegal*.

It is useful to bear in mind that an agreement to carry on business at a future time does not render the parties liable as partners until that time arrives. The true test of a partnership is the carrying on of business, not the agreement to carry on.

Kinds of Partners.

There are various terms applied to partners, depending on the nature of their connection with the partnership :—

(*a*) *General*, that is, a partner in the fullest sense.

(*b*) *Active*, that is, a partner who actively intervenes in the

management of the business and is known to the world as a partner.

(*c*) *Dormant*, that is, a partner who takes no active part in the management and is not known to the world as a partner.

(*d*) *Sleeping*, equivalent to Dormant.

(*e*) *Limited*, that is, a partner who takes no actual part in the management and whose liability is restricted to the amount of capital he has invested in the business.

(*f*) *Quasi-partner*, that is, a person who is, in fact, not a partner but who is regarded as such in the eyes of the law as a consequence of "holding-out." Where a man holds himself out as a partner he is estopped from denying to the creditors that he is one.

When a partnership is formed, the "firm," as it is termed, is not a legal entity, as in the case of a limited liability company, but consists of, say, *A* and *B* and *C*, who are unable, as a rule, to avoid personal liability for acts done in the firm's name; but partners may now sue and be sued in the name of the firm. If the name consists of the surnames of some or all of the partners, there is no restriction as to the employment of any name, even though it may conflict with another existing firm known by the same name, unless the name is calculated to mislead the public, as was held in *Turton* v. *Turton* (1889).

Registration under Business Names Act, 1916.

In certain circumstances, however, the firm must be registered under the Registration of Business Names Act, 1916. These circumstances are, in the case of a firm having a place of business in the United Kingdom—

(1) If the firm name does not consist of the true surnames of all partners who are individuals, and the corporate names of all partners who are corporations, without any addition except the true Christian names or initials of the individual partners.

(2) In cases where a partner has changed his name, except in the case of a woman who has married.

The particulars required are:—

(*a*) The business name, the general nature of the business and principal place of business.

(*b*) In respect of each individual partner, his present Christian name and surname, any former Christian name or surname, his nationality and, if that has been changed,

his nationality of origin, his usual residence, and any other occupation.

(*c*) In the case of a corporation which is a partner, the corporate name and registered office.

(*d*) Any change in the constitution of the firm.

Should there be default in registration the firm cannot, unless the Court grants relief, sue on any contract entered into while in default, but the firm may assert its rights by way of a counterclaim or set-off if it is itself sued. Every firm that is registered in accordance with these provisions must give particulars of the names and nationality of the partners in its trade catalogues, trade circulars, show cards, and business letters.

No partnership for profit may now be formed to consist of more than ten persons in a banking business, or more than twenty in any other business. Any association of persons exceeding that number must, to be legally recognized, be one of those previously mentioned.

What Constitutes a Partnership.

Whether a person is or is not a partner depends on the intention of the parties and the facts of the particular case. The sharing of profits is strong evidence of partnership, but it is not conclusive ; and the court will look at all the evidence and draw an inference therefrom.

The principal rules laid down by Section 2 of the Partnership Act for the purpose of determining who are partners or what constitutes a partnership, are as follows :—

(1) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

(2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

(3) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business, and in particular—

(*a*) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such :

(*b*) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make him a partner in the business or liable as such :

(*c*) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such a receipt a partner in the business, or liable as such :

(*d*) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto.

(*e*) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

To digress, it may be noted that the Act further provides that if the person to whom the money has been advanced under (*d*), or the purchaser of the goodwill under (*e*) above, should be adjudged bankrupt, or should enter into an arrangement with his creditors to pay less than twenty shillings in the pound, or should die insolvent, the lender of the loan and the vendor of the goodwill shall not be able to recover anything under their contracts until the claims of all other creditors have been satisfied. And it makes no difference, as was held in *In re Fort* (1897), whether such contract under (*d*) is or is not in writing.

Partnership is not to be confused with co-ownership, for although partners may be co-owners, the latter are not necessarily partners. Partnership cannot arise apart from agreement, but co-ownership may ; and a partnership is, from the definition given above, formed with a view to profit, but co-ownership does not necessarily involve this. Further, a co-owner can transfer his interest without the consent of the other co-owners, but a partner cannot, as a rule, do so without the consent of all the other partners.

The general rules of contract relating to capacity to contract apply in partnerships, and any person having the legal capacity to contract may enter into a partnership. It follows, therefore, that no such contract may be made with an alien enemy. On the outbreak of war, too, any partnership existing between a British subject and a person who becomes an alien enemy, or who adheres to the enemy, will be dissolved, as was done in the cases of *Rodriguez* v. *Speyer Bros.* (1919), and *Hugh Stevenson and Sons* v. *Aktiengesellschaft für Cartonnagen-Industrie* (1918). An infant may become a partner but may, on attaining majority, avoid his contract ; and in the meantime he does not incur personal

liability to creditors. If an infant who has entered into a partnership wishes to repudiate his contract he may do so within a reasonable time of attaining his majority, provided that he does nothing after coming of age which could be construed as ratification, e.g., receiving profits or taking an active part in the management.

After a partnership is formed new partners may be admitted, subject to agreement, provided the legal number is not thereby exceeded.

How Partnerships are Terminated.

Subject to any contrary expression of intention in the Articles, a partnership can be terminated in the following circumstances :—

(1) By effluxion of time, i.e., if entered into for a fixed period, by the expiration of that time.
(2) By the termination of the adventure or undertaking, if entered into for a single adventure or transaction.
(3) At the will of any partner, if no time has been fixed, but the other partners are entitled to certain notice of the intention ; or by the mutual assent of all the partners.
(4) By the bankruptcy or death of a partner.
(5) If one partner suffers his share to be charged for his separate debt, on the application of any of his creditors. This, however, is at the option of the other partners.
(6) By the occurrence of any event which would make its continuance illegal.
(7) By fraud, which makes the original contract voidable.
(8) By decree of the court.

The court may decree dissolution in the following circumstances :—

(*a*) Lunacy or permanent unsoundness of mind, or other permanent incapacity of a partner to perform his part of the contract.
(*b*) Misconduct of a partner calculated to prejudicially affect the carrying on of the business, or wilful or persistent breach of the partnership agreement, or such other wilful misconduct in relation to the partnership business as makes it not reasonably practicable for the other members to continue in partnership with him.
(*c*) When the business can only be carried on at a loss.
(*d*) Whenever the Court thinks it just and equitable to decree dissolution, e.g., incompatibility of temper. In *Watney* v. *Wells* (1862) a partnership was dissolved on the ground that the ill-

feeling between the parties rendered it impracticable that the business could be successfully or beneficially conducted.

Application to the Court under (*a*) and (*b*) above cannot be made by the party defaulting, except in the case of a partner found lunatic by inquisition, or of permanently unsound mind. Lunacy does not *ipso facto* dissolve a partnership unless so agreed; but, as mentioned above, it may be a ground for the Court to decree dissolution.

As a rule, the period for which the partnership is to last would be inserted in the Articles of Partnership; and, when that time is exceeded, the partnership then becomes a "partnership at will," under the old terms, so far as applicable. A partner at will can retire at any time, but the other partners are entitled to reasonable notice of his intention.

What may be taken as a retirement is sometimes a nice point to decide. For instance, in *Earle* v. *Cow* (1920), *A*, a partner in a firm, covenanted to pay to trustees a sum of money within six months after his retirement from the firm. Afterwards the partners turned the firm into a private limited liability company in which they were the directors and shareholders, and the business and assets were transferred to the company. It was held that although the same business was being carried on, the company was a different entity from the firm, and on the ordinary business meaning of the covenant, *A* had retired. On another construction it was held that as all the partners had voluntarily sold their business to a company, they had in the strict or technical sense of the covenant retired. It may be noted that if a continuing guaranty (that is, to cover transactions spread over a considerable space of time) or cautionary obligation (e.g., security for the faithful discharge or performance of duties) be given in respect of the transactions of a firm, it is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given.

Authority of Partners.

As between the partners and the *outside world*, each partner is the unlimited agent of every other partner in every matter connected with the partnership business, or which he represents as partnership business, and not being in its nature beyond the scope of the partnership. This is the position, whatever may be their *private relations between themselves*, as expressed in the Articles of Partnership. Such is the effect of the dictum of

JAMES L.J. in *Baird's Case* (1870); but a partner who acts apart from and outside the scope of the partnership business, does not bind the firm unless the other members subsequently ratify his acts. If the acts are not ratified, he is himself personally liable, as is any other agent who acts in excess of his authority.

In POLLOCK'S *Contracts* (*m*) the following general powers are noticed—

(1) Every partner may bind his firm by any of the following acts—
  (*a*) He may sell any goods or personal chattels of the firm.
  (*b*) He may purchase on account of the firm any goods of a kind necessary for or usually employed in the business carried on by the firm.
  (*c*) He may receive payment of debts due to the firm, and may give receipts.
  (*d*) He may engage servants for the partnership business.

(2) If the partnership is a trading one, every partner may also bind the firm by any of the following acts—
  (*e*) He may make, accept and issue bills and other negotiable instruments in the name of the firm.
  (*f*) He may borrow money on the credit of the firm, and may, for the purpose, pledge any goods or personal chattels belonging to the firm.

It should be noted that these powers are implied in the relation between the partnership and third parties; but they may, however, be modified as between the partners themselves, e.g., it may be agreed between them that the consent of all partners is required before money may be borrowed.

A partner cannot bind his firm by a deed signed in his own name unless authorized by a power of attorney; and, if the firm should desire to transfer any legal estate, it must be conveyed by one so authorized, or by all the partners. Neither can a partner bind his firm by giving a guarantee in its name, nor by a submission to arbitration.

Every partner has, therefore, implied authority to bind the firm by any acts done in the ordinary course of business, and this authority cannot be limited by private arrangement without notice, so that any person contracting with a partner in the ordinary way of business, not knowing he had no authority, can enforce his contract against the firm unless, of course, he did not know him to be a partner. Where a partner has exceeded

(*m*) 10th Edn.

his authority as agreed between the partners themselves, but the act is within the scope of the partnership authority, the third party will usually not be affected and it will be a matter for the partners to adjust between themselves.

The authority referred to above continues after dissolution of partnership so far as may be necessary for a proper winding up of the business; but a bankrupt partner is unable to bind the firm.

"*Notice to one partner is notice to all.*" By Section 16 of the Act it is laid down that notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Similarly, an admission or representation made by any partner concerning the partnership affairs, and in ordinary course of its business, is evidence against the firm.

Liability of Partners.

Every partner is liable for all debts and obligations incurred by or on behalf of the firm as from the date on which he becomes a partner. This liability extends to the results of any wrongful acts done in furtherance of the partnership business. In *Hamlyn* v. *Houston and Co.* (1903) one partner bribed a clerk of a competing firm to disclose information. It was within the course of the business of the partnership to obtain such information legitimately, and it was held, therefore, that the firm was liable in damages. But the liability does not extend to acts done outside the scope of the business by members of the firm, unless they were specially authorized to do such an act; neither is liability incurred in such event by mere holding-out. In the absence of any agreement with the creditors, the partner's liability does not terminate on his ceasing to be a partner, in respect of debts contracted while a partner; and he is liable for debts contracted afterwards unless and until he has given express notice of his ceasing to be a partner to all persons who have had previous dealings with the firm, and he has inserted a general notice in the *London Gazette* to the like effect. A dormant partner need not give such notice except to persons who knew him to be a partner. It is an interesting point as to whether the observance of the provisions of the Registration of Business Names Act, 1916, cited above, would not, in the cases where the Act applies, constitute a sufficiently express notice to old customers, e.g., an old customer receiving a letter from the firm on which was printed the names of the partners. On a partner's

retiring he may escape liability for debts incurred while he was a member of the firm by what is termed "novation," that is, an agreement made between the old firm, the creditors and the firm as newly constituted, i.e., after the outgoing partner has retired, that the creditors will look only to the new firm for payment.

Every partner is liable to the full extent of the firm's debts. The liability is joint, that is to say, if a creditor sues the firm and obtains judgment, and there is not sufficient of the joint (partnership) property to satisfy the judgment, he is at liberty to issue execution against the private property of the members. He can, if he desires, sue each partner individually; but, if he sues one and obtains judgment, he cannot enforce that judgment —even if he gets no payment under it—against any but the particular partner against whom it was obtained, nor can he afterwards sue the others. Thus, in *Kendall* v. *Hamilton* (1879), *A* and *B* who were partners borrowed money from *C*, who sued them for recovery of the money and obtained judgment. He obtained no satisfaction of the judgment, and afterwards discovered that *D* had at the time been a partner with *A* and *B*. It was held that *C* could not proceed against *D*, as the joint liability was merged in the judgment, and that had been pronounced only against *A* and *B*.

If a partner is dead, his private estate is jointly and severally liable, subject to the prior payment of his separate debts, for debts and obligations of the firm incurred while he was a partner. That is to say, that when one partner dies, thereby dissolving the partnership, his private creditors must first be paid out of his private property, and any balance is liable up to the full amount in payment of any unsatisfied debts of the partnership should the other partner or partners have become bankrupt. Of course if the surviving partners are solvent they are liable jointly for their due proportion.

If a partner has died, his executors are not liable by reason of the firm continuing to use the old firm name. An incoming partner is never liable for debts and obligations contracted before he became a partner unless he agrees to become liable, e.g., by novation. Should he so agree, then the original members of the firm can enforce his undertaking against him, but the creditors, as such, cannot do so unless they were not only parties to the agreement but also had given consideration for the new partner undertaking the liability.

"*Holding-out.*"—A person may be liable as a partner although not one in fact, by "holding-out," that is, he is estopped by his conduct from denying that he is a member of the firm. In *Martyn* v. *Gray* (1863), *A*, who was not a partner, was introduced

to a third party by *B* as being the partner who possessed the capital, and *A* did not deny the statement. It was held that he was liable for any loss incurred by the third party. It was laid down in *Mollwo March and Co.* v. *Court of Wards* (1872) that where a man holds himself out as a partner, or allows others to do it, he is then properly estopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted. A man so acting may be rightly held liable as a partner by estoppel. Such a person is sometimes known as a *quasi-partner.*

Liability for Torts.—Should a tort be committed by a partner in the ordinary course of the partnership business, the firm and each partner will be liable ; but, if the tort committed by one partner should be an act outside the scope of the apparent and ostensible authority as partner, then the firm and the other partners have no liability therefor. Where one partner does an act, e.g., publishes a libel, which would not affect the firm, there would be a presumption that the tort was not committed within the scope of his authority, but if the result should be that the firm would thereby benefit, the presumption should be otherwise. It would be noted that whereas in the case of contracts the liability of the partners is joint, in the case of torts for which they may be liable the liability is several also.

Employment of Trust Money.—If one of the partners is a trustee and he improperly employs some of the trust money in the partnership business, the other partners are not liable to replace the trust money, provided that they had no notice of the breach of trust. The trust money may be followed, however, and recovered from the firm if still in its possession or under its control.

A claim of one partner against another is barred after the usual period by the Statute of Limitations. The period commences to run from the date of dissolution, or from the time when the one partner was improperly excluded by the others from acting as a partner, as the case may be.

Secret Profits.—Every partner must account to the firm for any benefit he may have derived secretly and personally, without the consent of the other partners, from a partnership transaction ; and, if a partner, without the consent of the other partners, carries on a business competing with that of the firm, he must account for and pay over to the firm all profits made by him in connection therewith. In the case of *Bentley* v. *Craven* (1853), four partners were in business as sugar refiners, and one of them,

A, was in business himself as a sugar merchant. The other partners knew of this and did not object. But *A*, without the knowledge of the other partners, sold sugar to the firm at a profit to himself. It was held that he must account for and share the profit with the firm.

Utmost good faith required between the Partners.—Partners must render full information to their colleagues, and all must act also for the common advantage in all matters affecting the partnership. The partners' relation, one with the other, forms one of the class of contracts known as *uberrimæ fidei*, i.e., requiring the utmost good faith, for in the absence of this the partnership cannot conscientiously and successfully be carried on. Thus, in *Law* v. *Law* (1905), where one partner knew more about the partnership accounts and the state of affairs generally of the firm, and it was held that the sale by one partner of his share to the other must be set aside unless full information is furnished by the one to the other.

Retirement of Partner.—Unless in accordance with the terms of the Articles, a partner cannot retire from the firm without the consent of all the other partners, unless, of course, he be a partner "at will."

It was held in *Rouse* v. *Bradford Banking Co.* (1894) that if a partner retires from the firm, and agrees with the other partners that he shall be regarded as a surety only for the existing debts of the firm, any creditors aware of the agreement must treat him as a surety and he will be released should such creditors give time to the other partners.

Settlement of Disputes.—Where the Articles state a method of settling disputes between partners, that method must always be followed. If, however, the Articles should be silent on the matter, then any difference arising as to ordinary matters connected with the partnership business may, by Section 24 (8) of the Act, be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners. In cases of this kind, if the partners should be equally divided on the point at issue, the opponents of any change prevail. Where the dispute is on a matter outside the scope of ordinary matters connected with the partnership business, a majority of partners cannot bind a dissentient minority, even if that minority should be one partner only, neither can a majority expel a partner without power so to do being included in the Articles.

Rights of Partners.

The rights of the partners will, as a rule, be as provided in

the Articles of Partnership; but, *in the absence of any such provision*, the Partnership Act (Section 24) lays down the following—

(1) All partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses sustained by the firm.
(2) Each partner must be indemnified by the firm in respect of liabilities incurred and payments made by him in the ordinary and proper conduct of the business or in or about anything necessarily done for the preservation of the business or property of the firm.
(3) A partner making any actual payment or advance, beyond the capital he has agreed to subscribe for the purposes of the partnership, is entitled to interest thereon at the rate of 5 per cent. per annum from the date of the payment or advance.
(4) But no partner is entitled to receive interest on his capital before the profits have been ascertained. If there is an agreement to pay interest, such interest will as a rule be payable out of profits only.
(5) No partner is, ordinarily, entitled to remuneration for taking part in the business.
(6) Every partner, however, has the right to take part in the business.
(7) No new partner may be introduced without the consent of all the existing members of the firm.
(8) No change can be made in the nature of the business without the consent of all the existing partners; but, in all ordinary matters of business, any difference is decided by a majority of the partners. But a majority cannot expel a partner in the absence of express agreement to that effect.
(9) The books must be kept at the principal place of business of the firm, and every partner is allowed to inspect and copy them (himself or by his agent).

It should be particularly noted that the above rules may be, and frequently are, altered by agreement in the Articles of Partnership. Subject to agreement otherwise, a partner not only has a right to take part in the management, but he is also obliged to work in the business, and if he does not do so the court may decree dissolution on that ground. The general rule is, of course, that Articles define which of the partners shall work and state also the particular part of the business to which each shall attend. Similarly, it is usual to find that each partner is paid a salary for his work, not necessarily in proportion to his

interest in the firm. The rule that no remuneration is payable unless otherwise agreed, does not operate where a business is being wound up owing to the death or retiral on any ground of a partner. In such cases the surviving partner or partners are allowed to receive some remuneration for the additional trouble that falls on them. It was decided in *Burden* v. *Burden* (1813), however, that the surviving partners are not entitled to remuneration for winding up where it was caused by the death of one partner and they were acting as his executors, for executors are expected to act gratuitously.

Assignment of Interest in Partnership.—A partner may, in the absence of agreement, assign his share in the assets and profits to another person, either absolutely or by way of mortgage or redeemable charge. The assignee is then entitled to receive the share of profits to which the assigning partner would otherwise be entitled, but he does not thereby become a partner, and he must accept the account of profits agreed to by the other partners. On dissolution he is entitled to the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners ; and for that purpose may have an account taken, as from the date of dissolution only, in order to ascertain the value of the share, even if the partners have agreed between themselves as to such value. It was decided in the matter of *Garwood's Trusts* (1903) that the assignee has no cause of complaint of a *bona fide* agreement subsequent to such assignment to pay salaries to the partners, even though the profits should be thereby diminished.

Such assignment does not, in the absence of agreement, give the other partners the right to dissolve the partnership. But where a partner's share is charged involuntarily, as by an order of the court on the application of a judgment creditor, the other partners have the option of dissolving the partnership if they so desire.

Appointment of a Receiver.—Where a partner's share of the assets and profits is charged by an order of the Court, that is, an involuntary alienation, the Court may appoint a receiver of that partner's share of the profits. The receiver then, after deducting expenses and paying the judgment creditor, hands any balance to the partner whose interest is charged. In other cases the Court will not, as a rule, appoint a receiver unless either dissolution is shown or such facts as would entitle the applying partner to a decree of dissolution. The object of such appointment is merely to give relief by winding up and disposing of the assets and not with a view to carrying on the business. But the Court *may*, where gross abuse by one partner or some

partners is shown, appoint a receiver in the case of a subsisting partnership, but even then he will only be in the nature of an interim receiver ; and, where the Court does so appoint, it does not determine the questions arising between the partners, the only object being to protect the assets until the determination of the rights. The mere fact of a dissolution is in itself not sufficient ground for the appointment of a receiver, there must be some breach of the duty of a partner or of the contract, e.g., continuing to trade with the joint effects on the separate account. Where some partners seek to exclude one partner from his full share of the management, the Court will almost as a matter of course appoint a receiver, subject to any provision for exclusion contained in the Partnership Articles.

Partners' Rights on Dissolution.—When the firm has been dissolved, the rights of members, *so far as not expressly provided in the Articles of Partnership*, are—

(1) To demand a public notification of the dissolution and, to that end, to compel all members if necessary to sign the notice. Notice should be given in the *London Gazette* as to persons who have not had previous dealings with the firm, but private notice should be given to all persons who have had previous dealings with the firm.

(2) To have an equitable lien on the property of the firm which, including the goodwill, they are entitled to have sold and applied in payment of the firm's debts, and then in payment of what may be due to the partners. This lien exists throughout the partnership, but only becomes active on dissolution. It may be lost by agreement that on a dissolution the outgoing partner's share may be otherwise determined.

(3) To have the assets distributed as follows—

(*a*) In paying liabilities of the firm to persons who are not partners.

(*b*) In paying partners rateably what is due from the firm to them for advances as distinguished from capital.

(*c*) In paying each partner rateably what is due from the firm to him in respect of capital.

(*d*) In distributing the ultimate residue among the partners in the proportion in which profits are divisible.

But any losses, including deficiencies of capital, must be paid first out of profits, next out of capital ; if this

is exhausted, then loss must be met individually by the partners in the same proportion as the profits would have been divided had any existed. In *Garner* v. *Murray* (1904) it was held that, in the absence of contrary agreement, if partners divide the profits equally they must also bear the losses equally, and losses include not only liabilities to third parties but losses on capital. So that where *A* contributed £2,000 capital and *B* brought in no capital, he would have to bear half the loss if any or all of the £2,000 brought in by *A* had been lost.

(4) When one partner, on entering into partnership for a fixed time, has paid a premium and the firm is dissolved before the expiration of the term, that partner may claim, and the Court may order a return of, all or a certain amount of such premium; but not when the dissolution is occasioned by death or is wholly or chiefly due to the misconduct of the partner who paid the premium, nor when the firm has been dissolved by an agreement containing no provision for a return of any part of the premium. The incoming partner may also claim return of the premium and dissolution of the partnership where it was agreed that this should be done if the profits did not reach a certain amount, or where it was discovered that the profits of the business had been grossly exaggerated. The "premium" is a sum of money paid as the price of a share in the business, and as a rule it is only paid when a new partner is introduced into an established business with a good connection. What the incoming partner really purchases is a share in the assets, including goodwill, and a right to a share in the profits. On the purchase of "goodwill" the purchaser buys only the right to the probability of customers of the old firm coming to him; but where a new partner enters an established firm, he buys not only a share in this intangible property but also a share in the tangible assets of the firm as well as in choses in action.

(5) They are entitled to a settlement in due course, and the amount ascertained is deemed to be a debt accruing due at the date of the dissolution (or retirement), unless otherwise agreed; and if the continuing or surviving partners trade with the capital or assets of the firm without any final settlement of accounts, the outgoing partner or his estate is, in the absence of agreement to the contrary, entitled to such share of the profits made since

> the dissolution as the Court may find to be attributable to the use of the outgoing partner's share of the assets or, at the option of the outgoing partner or his representatives, to interest at the rate of 5 per cent. per annum on the amount of such share.

By the assets is meant, in the absence of agreement, all property and rights and interest in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business. This is all partnership property, and must be held and applied by the partners exclusively for the purpose of the partnership and in accordance with the partnership agreement; and property bought with the money of the firm is deemed to be partnership property, unless a contrary intention appears. All partnership property is regarded as personalty, so that even if real property is owned by the firm, on the death of a partner his share of the partnership estate passes to his personal representative.

Goodwill is a term which is difficult to define, but its meaning is fairly well understood. Lord Eldon said in *Cruttwell* v. *Lye* (1810), "The goodwill . . . is nothing more than the probability that the old customers will resort to the old place"; but this, obviously, is deficient as a definition, and Lord Macnaghten, in *Trego* v. *Hunt* (1896), said, "What goodwill means must depend on the nature and character of the business to which it is attached. Generally speaking it means much more than Lord Eldon took it to mean in the particular case actually before him of *Cruttwell* v. *Lye*. . . . Often it happens that the goodwill is the very sap and life of the business, without which the business would yield little or no fruit. It is the whole advantage, whatever it may be, of the reputation and connection of the firm, which may have been built up by years of honest work or gained by lavish expenditure of money."

Goodwill may be either *personal*, e.g., the skill of a surgeon or a clever workman, or it may be *local*, that is, attaching to the property, e.g., a conveniently situated sweet-shop, or a public-house, or a tobacconist's business.

The goodwill passes on the sale of a business, and the transferee jealously regards any attempt to undermine its value, so the vendor usually stipulates in an agreement that he will not compete with the transferee in a similar business within a certain area. (*n*) But, in the absence of any such agreement, the law is now well established as to how far the vendor is bound not to compete with the old firm. In *Trego* v. *Hunt*, cited above, it was summarized as follows—

(*n*) See *ante*, p. 41, as to Agreements in Restraint of Trade.

(1) The person who acquires the goodwill may alone represent himself as continuing or succeeding to the business of the vendor.
(2) The vendor may carry on a similar business in competition with the transferee, but he must not do so under a name which would amount to a representation that he was carrying on the old business.
(3) The vendor may publicly advertise the new business, but he must not, either personally or by circular, solicit the customers of the old firm, although he may deal with them if they come to him of their own accord.

Continuing Authority of Partners.—By Section 38 of the Act, after the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. But the firm is in no case bound by the acts of a partner who has become bankrupt. This proviso, however, does not affect the liability of any person who has, after the bankruptcy, represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

Winding-up.

A partnership is wound up under the Partnership Act, except that partnerships consisting of more than seven members may be wound up by an order of the Court under the Companies (Consolidation) Act, 1908, as an unregistered company if—

(1) It is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs
(2) It is unable to pay its debts
(3) In the opinion of the Court it is just and equitable that it should be wound up.

A partnership carrying on assurance business of any of the classes mentioned in the Assurance Companies Act, 1909, may, by order of the Court, be wound up under that Act.

Where a partnership is dissolved by the Court, the decree of dissolution acts as a dismissal of the employees of the firm, and there is no liability on the part of the firm to employees who have been employed on an unexpired agreement to serve for a term. Had the dissolution been voluntary, it still acts as a termination of service of employees, but in this case the firm would be liable for wrongful dismissal.

Administration of Partnership Estate.

Where a partner or partnership is bankrupt or insolvent, or where the estate of a deceased partner is being administered, the estate is administered as follows—

The partnership property is termed the *joint estate*, and the separate property of the partners the *separate estate*. The joint estate is first applied towards the payment of the debts of the partnership, and the separate estate to those of the individual partners. If there should be a surplus on the separate estate it is transferred to the joint estate, if that be deficient. Should there be a surplus on the joint estate, that is regarded as part of the separate estate in its due proportion to the interest of the particular partner. The rule is, therefore, as laid down in *Lacey* v. *Hill* (1874)—" as a general rule, a separate estate cannot prove against a joint estate, and a joint estate cannot prove against a separate estate, till the creditors of the respective estates sought to be proved against are satisfied."

Thus, if *A* and *B* are partners, *A* may owe £1,000 to his private creditors and his separate estate amount only to £800. *B* owes similarly £750 and his private estate is £1,000. Further —distinct from their private estates—the firm's assets, that is, the *joint* assets, are £1,800 and the joint debts £2,000. *A's* separate creditors first take his £800. *B's* separate creditors take £750 of his £1,000 and, of his remaining £250, he has to pay £200 to the joint creditors to make up the deficit on the joint estate as *A* has nothing left with which to pay his share of the firm's debts. So, too, if *A*, *B* and *C* are partners and the firm becomes insolvent and *A* and *B* are both insolvent, *C*, if he is solvent, will have to pay the full amount of the firm's debts to the joint creditors, but he can prove against the separate estates of *A* and *B*, for what it may be worth, to the extent of the amount he has paid in excess of his proper proportion.

This matter will be again considered hereinafter under the heading of Bankruptcy. (*o*)

Execution against Partners on Judgment against Firm.

Where a judgment or order is made against a firm, execution may issue—

(1) Against any property of the partnership within the jurisdiction ;

(2) Against any person who has appeared in his own name or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner ;

(3) Against any person who has been individually served,

(*o*) See *post*, p. 324.

as a partner, with a writ of summons, and has failed to appear.

Debts owing from a firm carrying on business within the jurisdiction may be attached, although one or more members of such firm may be resident abroad ; provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order.

LIMITED PARTNERSHIPS

By the Limited Partnerships Act, 1907, the liability of partners may be limited to a considerable extent. Limited partnerships may be formed which, like ordinary partnerships, must not consist of more than ten persons for the business of banking, or of more than twenty persons for any other business. There must be one or more persons called *general* partners, and one or more persons called *limited* partners. Any person capable of becoming a member of an ordinary partnership may become a member of a limited partnership. The general partners are liable for all the debts and obligations of the firm ; and the limited partners, who contribute at the time of entering the partnership a certain sum, or property valued at a stated amount as capital, are not liable for the debts and obligations in excess of this amount, although, of course, to that extent they are liable for debts and for any torts of other partners as general partners are. A general partner may subsequently become a limited partner, and a limited partner may become a general partner, provided that one partner of each class remains in existence in the Limited Partnership. But if a general partner becomes a limited partner the change should be advertised and notified to customers in the usual way.

A limited partner must not, during the continuance of the partnership, draw out or receive back any part of his contribution, and if he does so he will be held liable up to the amount so drawn out and received back for the debts of the firm. But he may assign his share, subject to the assent of the general partners and necessary registration and advertisement. Neither can a limited partner bind the firm or interfere in any way with the working or management of the business ; if he does so, he will be liable as a general partner for debts incurred while he so takes part in the business. A limited partner cannot object to the introduction of another partner. Limited partnerships must be registered and, until registered, each limited partner will be liable as a general partner. A limited partnership must have a firm name, and that name must also be registered, although the name need not disclose the fact that the partnership is limited. Registration is effected

by filing particulars with the Registrar of Joint Stock Companies. The statement filed must be signed by all the members—general and limited—and must contain the following particulars—

(1) The firm name.
(2) The general nature of the business.
(3) The principal place of business.
(4) The full name of each partner.
(5) The term, if any, for which the partnership is entered into, and the date of commencement. If no term is fixed, any other conditions of existence must be given.
(6) A statement that the partnership is limited, and the description of every limited partner as such.
(7) The sum contributed by each limited partner, and a statement as to whether paid in cash or otherwise.

Any changes in the partnership must be similarly registered. The statement sent to the Registrar of any change may be signed by the *firm* and not necessarily by each partner.

The registered particulars may be inspected by any person, and copies obtained on payment of a small fee.

A limited partnership is not dissolved by the death or bankruptcy of a limited partner, and his lunacy will only be a ground for dissolution if his share cannot be ascertained and realized otherwise, neither can the limited partner apply for dissolution of the partnership.

A limited partnership has an advantage over an ordinary partnership in that the liability of some members can be limited, but it has the disadvantage that certain particulars of the firm are available to the public. But it appears to have no advantages over a Private Limited Liability Company under the Companies Acts, 1908–17. In the latter method of carrying on business, the liability of *all* the members is limited, and very few more particulars are available to the world at large. In addition, the power to borrow money by means of Debentures is very useful to a Private Company, and there is no corresponding power in a Limited Partnership. In view, therefore, of the facilities for the creation of private companies with limited liability (*p*) very few partnerships are registered or are likely to be registered as limited partnerships.

Limited partnerships may be wound up by the Court in the exercise of its ordinary jurisdiction, like ordinary partnerships, or under the provisions of the Companies (Consolidation) Act, 1908, on the same grounds as those on which ordinary partnerships could thus be wound up, or in the case of lunacy, by the Judge in Lunacy.

(*p*) See *post*, p. 255.

CHAPTER 6

SECURITIES

In Chapter 4 consideration was given to the transfer of *rights in goods* with the intention that the ownership shall vest absolutely in the transferee. In this chapter it is proposed to deal with the transfer of *rights in property* of all kinds with the intention, even when ownership is transferred, that the ownership shall be re-transferred on the happening of certain events, i.e., the satisfaction of liabilities.

Where documents of title to goods or to rights, e.g., deeds, bills of lading, share certificates, etc., are in existence, they are often deposited with a banker or other person to secure a loan of money. This is usually done by way of *Mortgage.*

Where there are no documents of title and it is desired that the borrower shall retain possession of the goods on the security of which he desires a loan, it is usually carried out by means of a *Bill of Sale.*

Book debts are not chattels within the meaning of the Bills of Sale Act, 1882, and cannot be included in a Bill of Sale under that Act. But they may be mortgaged by assignment; and an assignment of all book debts due and owing, or which during the continuance of the security might become due and owing to the mortgagor, operates to pass the beneficial interest in a debt which comes into existence after the assignment.

If, however, the borrower has no objection to parting with possession of the goods, the transaction may be carried out by what is termed a *Pledge or Pawn.* In these instances, the person who borrows parts voluntarily with the ownership in the first case, and in the second with the possession of the goods or property.

But there is another form of security, termed *Lien,* which does not arise from the voluntary act of the owner of the goods or property. Lien arises where a creditor is lawfully in possession of the goods and he is entitled to hold them until certain charges due to him are paid.

The above are securities on property; but there is another form of security, termed "personal security," which is a personal

undertaking to pay a debt without the accompaniment of any charge on goods or property, e.g., a bond.

MORTGAGES

A mortgage is a conveyance of an interest in property to secure the repayment of money lent on the security of the property. The person who lends the money is called the *mortgagee*, and the borrower is termed the *mortgagor*.

As a rule, the term " mortgage " is applied to the conveyance of an interest in real property, i.e., land or interests therein, and a transfer of the right and property in goods is called a " bill of sale."

Mortgage.—There are two forms that a mortgage may take, " legal " and " equitable."

A *Legal Mortgage* is usually entered into when the transaction is not regarded as of a temporary nature, or if a large sum in proportion to the value of the property is required to be borrowed, for, as a rule, in spite of the usual covenants to repay in six months, it is not the intention that the mortgage money shall be then repaid and, in fact, ordinarily, so long as the interest is punctually paid, the principal sum is not called in by the mortgagee, it being regarded by him as in the nature of an investment. An *Equitable Mortgage* is more usual where a loan of a temporary nature is required, or only a small sum in proportion to the value of the property. It is more to the advantage of the mortgagor, as he does not part with the legal ownership of his property and the transaction can be carried through very speedily, at very slight expense, practically the only expense being the stamp duty. A legal mortgage is better security for the mortgagee, but from the point of view of the mortgagor is not so satisfactory if he wishes for a speedy loan for a short space of time only, and it is much more expensive, as in addition to the stamp duties there are the legal charges for preparation of the deeds.

The stamp duties on a legal mortgage are—

	£	£	*s.*	*d.*
Not exceeding	10	0	0	3
,, ,,	25	0	0	8
,, ,,	50	0	1	3
,, ,,	100	0	2	6
,, ,,	150	0	3	9
,, ,,	200	0	5	0
,, ,,	250	0	6	3
,, ,,	300	0	7	6
Exceeding £300, for every £100 or part thereof		0	2	6

The stamp duty on an Equitable Mortgage is 1*s.* 0*d.* for every £100 or part thereof.

Legal Mortgage.—In this form, *the actual legal ownership of the land, or of an interest therein, is conveyed by deed to the mortgagee,* who obtains all the deeds from the mortgagor, on the condition that, if the money lent thereon is paid on the due date, generally six months hence, together with the agreed interest, the mortgagee will re-convey the land or the interest therein to the mortgagor. This right to have the property re-conveyed, and of which the mortgagor cannot be deprived by any agreement which would prevent it so long as he observes the covenants, is called the " equity of redemption." Any agreement pretending to deprive the mortgagor of this right is called a " clog on redemption " and is void. As a general rule, the intention is not to pay off the sum borrowed at the end of the six months, and it is usually stipulated that the loan be allowed to stand so long as the interest is paid, but should either party wish to terminate the contract he can do so by giving the necessary notice.

Remedies of Mortgagee on Default of Mortgagor.—Should the mortgagor not pay the interest when due, or the principal money at the end of the period of notice, the mortgagee has several remedies available, the principal of which are foreclosure and sale.

These remedies are—

(1) *Foreclosure.*—The mortgagee has to take proceedings and claim that the mortgagor be directed to pay the principal and interest due by a specified date to be appointed by the Court, and in default thereof that he may be foreclosed his equity of redemption. If the amount is not paid on the due date, an order will be made vesting in the mortgagee the full beneficial title to the property, which he can deal with as he pleases, and the mortgagor usually has no further interest therein. The Court may, however, order a sale instead of foreclosure.

(2) *Sale.*—If the mortgagee has a power of sale under the mortgage, as is usual, he may sell the property. This he can do without reference to the Court. But he has no greater interest in the proceeds of the sale than he had in the property mortgaged, so after deducting principal, interest and costs, he must pay over the balance to the mortgagor. If the power of sale is not expressly given, or be excluded, by the mortgage deed, the mortgagee has a *statutory* right of sale under the Conveyancing Act, 1881, but in this case he cannot exercise his right unless and until—

(*a*) Notice requiring payment of the mortgage money has been served on the mortgagor and default has been made in payment thereof for three months after service of the notice, or

(*b*) Some interest under the mortgage is in arrear and unpaid for two months after becoming due, or

(*c*) There has been a breach of some provision contained in the mortgage deed or in the Conveyancing Act.

(3) *Appointment of a Receiver.*—By the above Act, when the statutory power of sale has become exercisable, the mortgagee may appoint a receiver of the income of the mortgaged property who may also while in possession cut and sell timber. The receiver, after paying outgoings and interest on the mortgage money, pays the balance to the person entitled thereto.

(4) *Taking Possession.*—The mortgagee may oust the mortgagor and take possession, but if he does so he is liable in equity to account very strictly for rents, profits, etc., if the property should be subsequently redeemed.

The mortgagee may exercise all the above remedies concurrently, but if he should foreclose and then sue, his action has the effect of re-opening the foreclosure and the mortgagor then has the right to redeem, so that where, as in *Lockhart* v. *Hardy* (1846), the mortgagee foreclosed and then sold the property, it was held he could not sue for the deficiency that resulted. But where he sells under his power of sale it seems, as in *Rudge* v. *Rickens* (1873), that he can still sue for any deficiency. The mortgagee must bring his action for foreclosure, or on the covenant in the mortgage, or any collateral bond within twelve years after the accrual of his right to receive the money, or after the last payment of principal, or interest, or a written acknowledgment.

Remedies of Mortgagor.—The remedies of the mortgagor are as follows—

(1) He may pay off the mortgage at the agreed date, but, if that day has passed, he must, as a rule, give six calendar months' notice in writing that he intends to pay it off and it is essential that he should pay or tender the money punctually. If he desires he may pay six months' interest in lieu of the notice.

(2) On due payment or tender of the money he can require the mortgagee to re-convey the legal estate in the property mortgaged at his (the mortgagor's) expense.

(3) If re-conveyance be refused, he may take proceedings in the Courts for redemption.

Second and Third Mortgages, etc.—Sometimes a person who has mortgaged his property wishes for a further advance, and if the mortgagee is unwilling to make a further advance, the mortgagor tries to find another lender, who lends the money on the security known as a second mortgage. It is really only a form of equitable mortgage, for the second mortgagee does not obtain a legal conveyance, nor does he hold the title deeds. Satisfaction of his claim is postponed until the first mortgagee has been satisfied. Similarly, a third mortgage might be made, and so on. If the first mortgagee should make a further advance after the second mortgage has been made, then if he knew of the second mortgage, his *further advance* cannot be satisfied out of the property until the second mortgagee has been satisfied. But if he did not know of it, then his further advance can be added to the amount of the first mortgage and the whole amount takes priority over the second mortgage, for here the equities as regards the second and third mortgages are equal, and therefore the person who owns the legal estate takes priority, the maxim being "Where the equities are equal the law shall prevail." Similarly, a third mortgagee who has advanced money without notice of the second mortgage, if he can buy the legal estate from the first mortgagee, can unite the two encumbrances, i.e., the first and third mortgages, with a view to squeezing out the intervening one, which is then deferred for payment until the third mortgage has been paid. This is termed the "tacking of securities."

Where several persons contribute to advance a sum on mortgage, such a mortgage is termed a "Contributory Mortgage." It is not a very satisfactory method of advancing money and, in fact, trustees are forbidden to advance money in such a manner.

It should be noted that an infant cannot contract a valid mortgage, and in *Nottingham, etc., Building Society* v. *Thurstan*, already cited, where an infant had borrowed money by way of mortgage and had expended it on building houses on the land mortgaged, the mortgage was set aside.

A Mortgage Debenture is an instrument charging the property and assets of a company, and it is usually secured by a Trust Deed vesting the legal estate in trustees for the benefit of the debenture holders. This matter is again considered under the heading of COMPANIES, Chapter 13.

Equitable Mortgage.—In the second form, an "equitable mortgage," the title deeds of the property are deposited with the mortgagee, either alone or with a memorandum setting out the details of the transaction, but *the legal ownership is not conveyed.* Such deposit of title deeds creates a charge on the property. An equitable mortgage can be created without the deposit of

the title deeds, by merely making a memorandum of charge, but in this case the security of the lender is comparatively valueless, as there is nothing to prevent the borrower, if he retains the title deeds, from either selling the property or borrowing further sums on a legal mortgage. In the event of a sale, the charge would be of no value ; and, in the event of a legal mortgage being entered into, the equitable mortgage would be postponed until the legal mortgage had first been satisfied out of the property. The usual remedy in case of default of an equitable mortgagor is foreclosure, but the Court may order a sale, and where the memorandum contains a covenant to execute a legal mortgage the mortgagee would have a right of sale. The provisions of the Conveyancing Act, 1881, above referred to, only apply to a mortgage by deed, and therefore do not affect an equitable mortgage by deposit of title deeds. In such mortgages there should be an express proviso giving the mortgagee a power of sale on the mortgagor's default, or else there will have to be an application to the Court.

The matter of mortgages of real property will not be further considered herein, in view of the fact that this branch of the law does not, strictly speaking, appertain to Mercantile Law, but is a branch of Property Law.

Personal Property.

Most mortgages of personal property fall within the purview of the Bills of Sale Acts, 1878 and 1882. But there are some cases where, for instance, life policies or shares are mortgaged, where the transaction is not a Bill of Sale. In such a case the rights of both parties are more or less as defined above, save that the remedy of the lender will depend on whether the mortgage has been entered into by deed or not. If by deed, the Conveyancing Act, 1881, Sections 19 and 20, will apply and confer the same powers as mentioned above in the case of mortgages. If, however, it was not created under seal, the mortgagee would, in case of default by the mortgagor, have an implied power of sale.

Bills of Sale.

A very usual mode of dealing with goods is by Bill of Sale. Such an instrument effects a transfer of the goods or chattels to the lender. The Act of 1878 now applies only to *absolute* Bills of Sale, i.e., those given otherwise than as security for money and which pass the property absolutely to the transferee ; and the Act of 1882, as slightly amended by the subsequent Acts of 1890 and 1891, applies to *conditional* Bills of Sale, or those given by way of security for money.

What constitutes Bills of Sale.—The term "bill of sale" includes not only those strictly so called, i.e., assignments of personal chattels giving a title without delivery, but also by Section 4 of the Act of 1878 assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, licences to take possession of chattels as security for any debt, and also any agreement, whether or not intended to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred.

Documents which are not Bills of Sale.—But the term does not include transfers of ships or shares therein, transfers of goods in the ordinary course of trade, bills of lading, a verbal contract, assignments for the benefit of creditors, marriage settlements, or any documents used in the course of trade or business as proof of the possession or control of or authorizing the possessor to transfer or receive goods, assignments of fixtures and growing crops unless assigned separately from the land to which they are attached, or debentures of incorporated companies. (*q*) A hiring agreement is not a bill of sale unless, though nominally a hiring agreement, it is actually a device to secure money. Assignments of stocks, shares, contracts and other choses in action are not assignments of personal chattels.

It may perhaps be mentioned, too, that the Bills of Sale Act, 1891, amending an Act of 1890, enacts that—

> "An instrument charging or creating any security on or declaring trusts of imported goods given or executed at any time prior to their deposit in a warehouse, factory, or store, or to their being re-shipped for export, or delivered to a purchaser not being the person giving or executing such instrument, shall not be deemed a Bill of Sale within the meaning of the Bills of Sale Acts, 1878 and 1882."

Bills of Sale Act, 1878.—The two Acts are very similar in their provisions, but the respective objects are very different. *The Act of* 1878 *aimed at the protection of creditors* by preventing false credit being given to persons in apparent possession of goods which actually belong to other persons.

By the Act of 1878, every bill of sale—

(1) Must be attested by a solicitor, who must state that he has explained the effect to the grantor.

(2) Must contain a statement of the consideration, and this must be substantially accurate. But it is sufficient if either the true legal effect or the true business effect be stated. The consideration may consist of a pre-existing debt.

(*q*) See *post,* p. 273.

(3) If made with a *defeasance*, i.e., any agreement which enables the bill of sale to be avoided, or if subject to any condition or declaration of trust, such defeasance, condition or declaration of trust must be set out on the same paper which contains the bill before it is registered, otherwise the registration is void.

Thus, in *Counsell* v. *London and Westminster Loan Co.* (1887), where a promissory note was given at the same time as the bill was made and for the same consideration, payable by instalments, with a proviso that if the instalments were not paid to date the whole debt would be claimed at once, it was held that this was a defeasance, for the bill of sale would be defeated by payment of the promissory note, and since this was not contained on the same paper, the bill was void.

(4) Must be registered, within seven days after execution, at the Central Office of the High Court.

Such registration includes—

(*a*) The original bill with every schedule or inventory referred to in it or annexed to it;

(*b*) A true copy of (*a*) and of the attestation of the execution of the bill;

(*c*) An affidavit giving particulars of the execution and attestation.

(5) Must be re-registered every five years.

Any person is entitled to search the registers and to obtain an official copy of a bill of sale.

The following fees are payable at the Central Office—

	£	*s.*	*d.*
On filing a bill of sale and affidavit—			
Where consideration does not exceed £100 .	0	5	0
Exceeding £100 but not exceeding £200 .	0	10	0
Above £200	1	0	0
Re-registration	0	10	0
Fiat of satisfaction	0	5	0
Request for search and certificate . . .	0	5	0

The stamp duty on the Bill is as for a conveyance of property.

Bills of Sale Act (1878) *Amendment Act*, 1882.—*This Act has for its object the protection of borrowers*, as impecunious persons, it was found, on borrowing money were often induced to sign documents of a complicated nature which they did not understand.

By the Act of 1882, every bill of sale—

(1) Must be attested by one or more credible witnesses, and the name, address and description of the witnesses must be given.

The description must be accurate. If the witness has

an occupation, that will be sufficient description; but, if he has no occupation, then his style must be given. In *Sims* v. *Trollope* (1897), the witness had no occupation, and it was held that he had not been sufficiently described as his style had not been given.

(2) Must be in accordance with the form given in the schedule of the Act. The exact words need not necessarily be used, provided that the same legal effect is produced, and that they do not deceive any reasonable person as to their exact meaning.

(3) Must contain a statement of the consideration, accurately set out, which must amount to £30 at least. [A Bill of Sale for a consideration less than £30 is void.]

(4) Registration and re-registration are necessary as under the Act of 1878, and the fees are the same.

The stamp duty on a Conditional Bill of Sale is the same as for a mortgage.

Section 14 of the Act enacts that a Judge, on being satisfied that an omission to register or re-register within the specified time, or an omission or misstatement of the name, residence or occupation of any person, was accidental or due to inadvertence, may, in his discretion, order such omission or misstatement to be rectified on such terms and conditions as he thinks fit to direct.

FORM OF THE BILL OF SALE

The Form of a Conditional Bill of Sale under the Act of 1882 is as follows—

"This indenture made the day of between *A.B.* of of the one part and *C.D.* of of the other part Witnesseth that in consideration of the sum of £ now paid to *A.B.* by *C.D.* the receipt of which the said *A.B.* hereby acknowledges [*or whatever else the consideration may be*] he the said *A.B.* doth hereby assign unto *C.D.* his executors administrators and assigns all and singular the several chattels and things specifically described on the schedule hereto annexed by way of security for the payment of the sum of £ and interest thereon at the rate of per cent. per annum. And the said *A.B.* doth further agree and declare that he will duly pay to the said *C.D.* the principal sum aforesaid together with the interest then due by equal payments of £ on the day of [*or whatever else may be the stipulated times or time of payment*]. And the said *A.B.* doth also agree with the said *C.D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C.D.* for any cause other than those specified in Section 7 of the Bills of Sale Act (1878) Amendment Act, 1882.

In Witness, etc.

Signed and sealed by the said *A.B.* in the presence of me ***E.F.*** [*add witness's name, address and description*].

The effect of non-compliance with any one of the above provisions is as follows—

(1) *Under the Act of* 1878, as regards goods covered by the bill, if in the apparent possession of the grantor, the bill is void against—
  (*a*) The trustee in bankruptcy
  (*b*) An execution creditor
  (*c*) Assignees for the benefit of creditors
  but is good for all other purposes.
(2) *Under the Act of* 1882 it is void for all purposes, i.e., between grantor and grantee, as well as regards all other creditors of the grantor.

As regards the form set out above, it will be noted that no goods can be included in the security which are not specifically set out in the schedule annexed to the bill, and the inclusion of any goods not the property of the grantor will make the bill void to that extent, except as against the grantor, so that a trader cannot include in a bill of sale his floating stock-in-trade, for want of definiteness. Neither can future or after-acquired chattels be included. But there are two exceptions to the rule—

(1) Growing crops, which are actually growing at the time, may be included, and
(2) Fixtures, plant or trade machinery, used in or attached to or brought upon any premises in substitution for others specifically described in the schedule to the bill of sale.

It is necessary, as stated above, that there should be no substantial departure from the form, and even though it may be practically impossible, from the nature of the transaction, to make the bill in the prescribed form, the departure from the form will make it void as a bill of sale.

So that if, for instance, as in *Myers* v. *Elliott* (1886), a bill provides for a lump sum by way of interest, while the form provides for interest at "... per cent. per annum," it is invalid. Again, in *Altree* v. *Altree* (1898), the grantee's address was omitted and the bill was held to be void. There are numerous other instances where a slight departure from the form prescribed has been fatal to the instrument. But it was held in *Cochrane* v. *Entwistle* (1890) that where a document is a security on property other than personal chattels, e.g., tenant-right and goodwill, and also on personal chattels, the instrument is void as a bill of sale, but only so far as regards the personal chattels, and the residue of the security is good.

Remedies of Grantee.

There are only five causes for which the grantee may seize the chattels specified in the schedule; and even then he must wait five days before removing the goods. Within that period the grantor may apply to a judge at chambers, who may restrain the grantee from removing the goods if he is satisfied that the cause of seizure no longer exists. After the five days the grantee may sell the goods.

The five causes are—

(1) If the grantor shall make default in payment of the sum of money secured by the bill at the time provided therein for payment, or in the performance of any covenant or agreement.

(2) If the grantor shall become bankrupt or suffer the goods, or any of them, to be distrained for rent, rates or taxes.

(3) If the grantor shall fraudulently remove his goods or suffer them to be removed from the premises.

(4) If the grantor does not, without reasonable excuse, upon demand in writing by the grantee, produce his last receipts for rent, rates and taxes.

(5) If execution shall have been levied against the goods of the grantor under any judgment at law.

It should be noted that under a rule of the Supreme Court "when goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the High Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just." There is a similar provision in the County Court Rules.

PAWN OR PLEDGE

A Pawn or Pledge is a delivery of goods, or of documents of title thereto by a debtor, transferor, pawner or pledgor to a creditor, transferee, pawnee or pledgee as security for a debt, or for the performance of a specified engagement, under such circumstances that a special property passes to the pledgee, while the general property remains with the pledgor. Its effect is to transfer possession and consequent rights, and therefore if the goods are taken from the pledgee he, as well as the pledgor, can bring an action for the return of the goods. The goods usually pledged are small movable articles such as watches, jewellery, clothing, etc. All classes—whether rich or poor—make use at

times of this method of raising loans, and the demand for such accommodation has produced a class of traders known as pawnbrokers, who specialize in lending money on movable property as distinct from lending on real property by legal or equitable mortgage, or on goods which remain in the possession of the borrower as in a Bill of Sale. The advantages of such a method of raising a loan are fairly obvious. The borrower parts with a chattel which often it is no hardship to do without, and the lender has a substantial security for the return of the money lent. Moreover, the transaction can be effected with secrecy and speed.

As a rule, no person can pledge property that does not belong to him, and a person pledging impliedly undertakes that the article is his property. The exception to the rule is the power given to a factor under the Factors Act. (*r*)

There is an implied undertaking on the part of the pledgee that he will return the property when the debt is paid at the agreed date or, if no date is stated, then when the pledgor pays the amount due. If the amount is not paid on the agreed date, or after reasonable notice when no date is stated, he may sell the goods and pay himself the amount of the debt with interest and costs from the proceeds. If there should remain any balance, he must return it to the pledgor, and if there should be a deficiency the pledgee has a claim against the pledgor for the balance.

In *Coggs* v. *Bernard*, already cited, the circumstances were that a person had undertaken voluntarily to lay down certain hogsheads of brandy in a cellar, and by his default one was staved in. The decision there is of no value in considering the present matter, but the case is of importance as being the leading authority on bailments, as in the course of the judgment Lord Holt gave a classic definition of bailments and stated the liabilities of the bailee under different circumstances. He held that in a pledge the pledgee may use the article pledged if it will do it no harm, but such user will be at the peril of the pledgee. But Chitty (*s*) is of opinion that the law now is that the pledgee is never justified in using the article pawned unless it is of such a nature that he is at some expense to maintain it as, for instance, a horse which requires expenditure on food.

The liability of a pledgee is only to use ordinary diligence ; so that if the article is lost and the pledgee has used ordinary diligence, he is not liable, and similarly if the article is stolen.

If the pledgee parts with possession of the articles pledged, he loses his rights ; but it was held in *North Western Bank* v. *Poynter* (1895) that if he re-delivers them to the pledgor for a limited purpose he does not lose his rights.

(*r*) See *ante*, p. 85.
(*s*) Chitty on *Contracts*, p. 465.

Pawnbrokers.

The Pawnbrokers Act, 1872, applies to certain pledges given to pawnbrokers, i.e., persons who are licensed to carry on the business of taking goods and chattels in pawn. The licence must be taken out for each shop kept. But a person is not deemed to be a pawnbroker by reason only of his paying, advancing or lending on any terms any sum or sums of above ten pounds. The Moneylenders Acts do not apply to pawnbrokers as such. Among the provisions of the Act are the following—

(1) The Act does not apply to loans of over £10.
(2) Pawn tickets must be given for every pledge.
(3) Every pledge is to be redeemable within twelve months, with seven days of grace added.
(4) Pledges not redeemed, if above ten shillings in value, are to be sold by auction ; if ten shillings or under, they are forfeited, and the pawnbroker may dispose of such as he thinks fit.

Within three years of the sale the pawner may inspect the account of the sale in the pawnbroker's books, on payment of one penny, and receive any surplus produced by the sale. But deficit on sale of one pledge may be set off by the pawnbroker against surplus on another.

(5) Pledges over ten shillings are redeemable at any time until sold—on tender of the loan and interest to date.
(6) There is a maximum rate of interest laid down, which must not be exceeded by the pawnbroker—
    (*a*) Where the sum advanced is not more than 10*s*., one halfpenny for every month or part of a month on each 2*s*., and a halfpenny for the ticket. After the first calendar month, any time not exceeding fourteen days is to be charged as half a month.
    (*b*) Where the sum is between 10*s*. and 40*s*., the same rate as in (*a*), but one penny may be charged for the ticket.
    (*c*) Where the sum advanced is between 40*s*. and £10, one halfpenny for each month or part of a month on each 2*s*. 6*d*., and one penny for the ticket.
(7) Provided that a special pawn ticket is signed by the pawnbroker, and a duplicate by the borrower, special contracts may be made on loans above forty shillings.

It was held in *Jones* v. *Marshall* (1889) that this special contract does not exclude the common law right of the pawnbroker

to recover the balance due to him after sale of the pledge for less than the amount of the debt.

A pawnbroker has certain liabilities.

(1) He is liable for loss by fire, and he should therefore protect himself by insurance.

(2) If he takes stolen goods in pledge, or goods not the property of the pledgor, he may be sued for *conversion* or *detinue*, and be compelled to restore them to the rightful owner without compensation.

It was held in *Hastings* v. *Pearson* (1892) that where a person entrusted with goods for the purpose of sale pledges them with a pawnbroker, the former is not a mercantile agent " acting in the ordinary course of business of a mercantile agent," and the pawnbroker is not protected by Section 2 of the Factors Act from an action by the owner to recover the goods.

(3) If by default or neglect of the pawnbroker the pledge suffers any injury or depreciation, he may be compelled summarily to pay reasonable compensation to the owner.

A pawnbroker is indemnified against giving the goods to a person not entitled to them, provided such person produces the pawn ticket, as he is presumed to be the person entitled to redeem the pledge. But this does not protect the pawnbroker against the owner of property which is pledged against his will; it only applies as between the pawnbroker and the person who pledged or authorized the pledge of the goods. [*Singer Manufacturing Co.* v. *Clark* (1879)].

When the pawnbroker sells a pledged article there is no warranty of title on his part. He can only transfer the rights which he himself had, so that, as in *Morley* v. *Attenborough* (1873), if a pawnbroker should sell an unredeemed pledge which afterwards proves to have been stolen and which is restored to the true owner, the buyer has no remedy against the pawnbroker.

LIEN

There are three kinds of lien—possessory, maritime and equitable.

A lien is a " right " either to retain goods or to have property dealt with in a particular manner. It will perhaps be an advantage to understand what, in this connection, a " right " is, before considering in more detail the different kinds of lien. A right here may be defined as an intangible interest in or over property, which interest may be enforced by legal action, for instance, a right to *stoppage in transitu*, already referred to. (*t*) Here the

(*t*) See *ante*, p. 141.

person who possesses the right has an interest in the goods, although they have already been handed to a carrier for conveyance to the purchaser. The seller still retains an intangible interest which, in the event of certain circumstances, he may enforce by appropriate legal action.

Such rights accrue generally by reason of property being in the possession of one party, who has done something either to the goods or for the benefit of the person who would otherwise be entitled to the goods free from all encumbrance. In the instance given above of *stoppage in transitu*, the seller had done something for the benefit of the buyer, who is the person entitled to the goods subject to this intangible interest. What he had done was to allow the buyer to have the goods consigned to him without himself receiving the purchase price.

In the case of the lien of an innkeeper, the innkeeper has done something for the benefit of the guest, who is owner of the goods, viz., he has supplied the guest with lodging and food without asking for cash in exchange as each article of food was handed to him, i.e., he has given him credit.

The right thus vested in the person who owns it is often of very great value, not so much intrinsically as in that it is useful as a lever to compel the owner of the goods to pay what he owes the person who owns this right in or over the goods. There is no doubt that the reason why innkeepers are usually paid promptly by their guests, is that if a guest's accounts are not paid, the innkeeper's right of lien comes into existence, and he can prevent the guest from taking away his baggage if he should seek to do so while his account is unpaid.

Discharge of Lien.—There are several methods by which the lien may be discharged—

(1) By payment of the amount owing.
(2) By parting with possession of the property.
(3) By the giving of credit for the amount owing.
(4) By accepting security in return for discharging the lien.

Possessory Lien.

A Possessory Lien is the right of one man to retain that which is lawfully in his possession but belonging to another, until certain demands of the possessor against the owner are satisfied.

The lien is lost if the person who has the lien takes a security for payment, e.g., a bill of exchange, but should the instrument be dishonoured while the creditor still holds the goods the right of lien revives if the instrument is still in his hands, but not if it is in the hands of a third party. As a rule, a possessory lien confers no right of sale, except that an unpaid

seller of goods has in certain cases a right of re-sale (*u*), and that innkeepers have certain statutory powers of sale under the Innkeepers Act, 1878, and wharfingers under the Merchant Shipping Act, 1894.

Such a lien may be either *general* or *particular*.

General Lien.—The law leans against a general and in favour of a particular lien, and a general lien therefore can only exist where it arises from custom or is founded on contract. It is the right of retaining goods not only for a debt in connection with them, but in respect of a general balance of account due, e.g., the right of a solicitor to retain his client's papers until the general balance due to him is paid. But a solicitor cannot refuse to produce any papers that are required in a particular action. Such a lien exists in connection with bankers, factors, solicitors, stockbrokers, and insurance brokers.

Particular Lien.—This is a right to retain the particular goods in connection with which a certain debt has arisen, e.g., the ordinary right of a seller to retain the goods until payment of the price ; a carrier to retain goods delivered to him for carriage until payment of his charges ; an innkeeper can retain his guest's goods until his account is settled ; a shipowner may retain the cargo until the freight is paid. The lien may arise by implication or by express agreement, e.g., where labour or skill have been exercised upon a particular thing the workman has an implied lien for the cost.

The innkeeper's right of lien is not only on property brought to the inn by the guest, but also on property sent to him there, even though it does not belong to the guest and the innkeeper is aware of it, except, however, goods the property of a third person, sent to the guest for a temporary purpose, e.g., a piano on hire. In *Robins* v. *Gray* (1895), a commercial traveller had samples of goods sent to him at an inn, and as he had not paid his account the landlord detained the samples. It was held that the innkeeper had a right of lien thereon.

Maritime Lien.

A maritime lien is a right of lien which attaches to a ship in connection with some liability incurred and arising out of a maritime adventure, but it does not depend on possession, and herein differs from the lien considered above. Examples are—liens arising out of salvage claims, for seamen's wages, for damage by collision, the lien of a bottomry bondholder. For further consideration of these points, see Chapter 7. A maritime lien

(*u*) See *ante*, p. 142.

is enforceable by arrest and sale, through the medium of the Admiralty Court.

Equitable Lien.

An equitable lien has nothing to do with possession. It is merely a *right* to have a specific portion of property dealt with in a particular manner, e.g., the right of a partner on dissolution of the partnership to have the assets of the partnership applied to the payment of the joint liabilities.

Bond.

A bond is a security for the payment of a sum of money, or for the performance of some other act. As a rule, a bond has a condition attached whereby it is declared to become void if the person bound (who is termed the *obligor*) does a particular act within a stated time, but if he does not do it then the sum mentioned in the bond is forfeited. If no such condition is annexed the bond is termed a " single " bond.

Where a bond is entered into for the payment of a certain sum by a specified date, with the condition that on failure to pay by the due date the sum shall be increased to a larger amount, the creditor cannot necessarily claim the larger amount, which is in the nature of a penalty, but can only recover the principal sum, with interest and costs.

A bond must be under seal, and it merges in itself all antecedent debts on which it is founded.

The attendance of witnesses in criminal proceedings is secured by a bond, which in this case is termed " recognizance." If the witness should not attend as directed he forfeits the sum mentioned in the bond.

CHAPTER 7

SHIPPING

The whole of the law relating to the registration and ownership of British ships, and generally as to merchant shipping, has been codified by the Merchant Shipping Act, 1894, and slightly amended by short Acts passed in 1897, 1900, 1906, and 1907. Where reference to the Act of 1894 is necessary it is referred to herein as "the Act." The Act is a very lengthy document consisting of 748 sections and twenty-two Schedules, so that obviously it is impossible here to consider it in detail, nor would that be necessary for the purpose of this work. It is proposed, therefore, to notice here, briefly, the law as it relates to

(1) Registration.
(2) Ownership and Management.
(3) The Master.
(4) Salvage.
(5) Seamen.

Registration.

All British ships, with certain exceptions, are required by the Act to be registered and, if not so registered, are not recognized as British ships. The following are the excepted ships—

(1) Ships not exceeding fifteen tons burden employed solely in navigation on rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of the ships are resident.

(2) Ships not exceeding thirty tons burden, and not having a whole or fixed deck and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of Saint Lawrence, or on such portions of the coasts of Canada as lie bordering on that gulf.

Before a vessel may be registered, the following prescribed requisites must be satisfied—

(1) The name of the ship must be painted or marked on each of her bows and the name of the port of registry on her stern.
(2) Her official number and the number denoting her registered tonnage must be cut on her main beam.
(3) Her draught must be marked on each side of her stem and of her stern post in Roman capital letters or figures.
(4) A certificate of survey must be delivered to the Registrar, giving her tonnage, build, and particulars descriptive of her identity.
(5) On first registration, a builder's certificate giving her build and tonnage, time and place where built and, if she has been sold, the bill of sale by which the ship was vested in the owner.
(6) A declaration of qualification by the owner, containing, amongst other particulars, the name of the master.

Application for registration may be made by the owner or owners or by an agent duly authorized. Registration is carried out by the officials specified in the Act at approved ports in the United Kingdom and at various ports overseas. The registrar enters the particulars in a Register Book and gives the applicant a Certificate of Registry, which is a copy of the entry in the Register Book. Whenever a change occurs in the ownership, the change must be endorsed on the certificate of registry by the same registrar or by the registrar at another port advised by the registrar of the port of registry.

Where a registered ship is so altered as not to correspond with the particulars relating to her tonnage or description, e.g., by converting a vessel from a sailing ship into a steamer, the register must be altered at the port where the alteration is made if there is a registrar there, or if no registrar is there, then at the first port called at afterwards where there is a registrar. Where a registered ship is either actually or constructively lost, taken by the enemy, burnt or broken up, or where it ceases by reason of transfer to persons not qualified to be owners of British ships, or otherwise, to be a British ship, every owner of the ship or any share therein must immediately on obtaining knowledge of the event, give notice to the registrar at her port of registry ; and if the certificate has not been lost it must be given up to the registrar or a British consular officer.

Ownership and Management.

The Act provides as follows as to ownership—

(1) The property in a British ship shall be divided into sixty-four shares.

(2) Not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship, but the rule does not affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner. In many cases, of course, a limited liability company becomes the registered owner of either single ships or fleets of vessels.

(3) A person shall not be entitled to be registered as owner of a fractional part of a share, but any number of persons, not exceeding five, may be registered as joint owners of any share in a British ship.

(4) Joint owners shall be considered as constituting one person only as regards the persons entitled to be registered, and shall not be entitled to dispose in severalty of any interest in a ship or in any share therein in respect of which they are registered. In this respect they differ from partners who can, subject to agreement, dispose in severalty of their shares in the partnership property.

(5) A corporation may be registered as owner by its corporate name.

(6) Ownership may be transferred by bill of sale in the form set out in the Act, (*h*) but the transferee shall not be registered as owner until he has made a " declaration of transfer " to the effect that he (or his corporation) is qualified to own a British ship, and that to the best of his knowledge and belief no unqualified person or body of persons has any legal or beneficial interest in the ship or any share therein. Certain restrictions on transfer were operative during the Great War, and some are still continued.

(7) Ownership may be transmitted by death or bankruptcy to the executor or administrator, or to the trustee in bankruptcy, as the case may be. The person to whom transmitted must be capable of owning a British ship, and he must make a " declaration of transmission " giving similar particulars, and producing proof of his right to the transmission. If the person to whom transmitted is not qualified to own a British ship, the court may order that the property be sold and the proceeds paid to the person entitled.

(8) Mortgage of the ship or a share therein shall be in the form prescribed by the Act. It does not transfer the ownership, but confers a power of sale on non-payment.

(*h*) This has no connection with the Bills of Sale Acts of 1878 and 1882, considered in Chapter 6.

(9) No notice of any trust, express, implied or constructive, shall be entered in the Register Book or be receivable by the registrar.

(10) There is an obligation on the owner, any agreement to the contrary notwithstanding, to use all reasonable means to insure the seaworthiness of the ship at the commencement of the voyage, and to keep her in a seaworthy condition during the voyage.

Where several persons own a ship as co-owners they frequently appoint one of their number to manage the employment of the ship and to do all that is necessary to carry the adventure to a profitable conclusion. Such an owner is termed a "managing owner." When several persons own the ship and the manager so appointed is not a co-owner, he is termed the "ship's husband."

A manager so appointed must be registered at the port of registry. He has implied authority to do all that is necessary up to the commencement of the voyage; after that, as will appear later, the master is responsible.

Failing the appointment of a manager the will of the majority of owners will, as a rule, prevail; but, if there should be a dissentient minority as to the destination and details of an intended voyage, the Court may cause indemnity to be given to the minority that the vessel will return safely.

The Master.

The owner must appoint a properly qualified master to navigate the vessel. He is bound to keep an official log, and he must produce this and the ship's papers when required to any commissioned officer of any of His Majesty's Ships, and to certain other officials specified in the Act. The papers usually carried are—

(*a*) The Certificate of Registry.
(*b*) The Agreement with the Seamen.
(*c*) The Manifest or general statement as to ship and cargo.
(*d*) The Muster Roll, or particulars of all persons on board.
(*e*) The Charter Party and Bills of Lading.
(*f*) The official Log Book and Ship's Log Book, in which are entered all the details of the voyage.
(*g*) The Bill of Health, a certificate given by a consul or other authority declaring the state of health at the place where the ship clears from any port.

The master is invested with power to do everything necessary to bring the voyage to a successful termination, and he has disciplinary powers over all persons on board. Before the com-

mencement of the voyage he takes in the cargo and signs the Bills of Lading for all goods received on board.

General Average.—During the voyage the master has unlimited discretion to act in time of peril, and, if necessary for the general safety, he may throw goods overboard to lighten the ship. This act is termed *jettison*. It would, of course, be unfair that the owner of the particular goods should bear the whole of the loss which was incurred for the general benefit. The loss is, therefore, apportioned or adjusted rateably, between all the parties interested. This adjustment is termed *General Average*. It is a very ancient custom, and arises independently of contract although, as a matter of practice, the law which is to govern the general average is usually determined by agreement. In the absence of any agreement, however, the law applicable is that of the port of destination. An attempt has been made to obtain uniformity in the matter of general average, and a set of rules now in fairly general use is known as the York-Antwerp rules. (*v*) The whole subject is at present under discussion by leading shipowners and underwriters.

There are certain essentials that must exist before general average may arise—

(*a*) That it was absolutely necessary to incur some sacrifice ;
(*b*) That it was incurred voluntarily and intentionally;
(*c*) That it was incurred in the avoidance of a danger common to all interests ;
(*d*) That it was a real sacrifice and not a mere casting off of that which had become already lost and consequently of no value ;
(*e*) That the ship and at least some portion of the cargo have been preserved ;
(*f*) That there was no default by the person whose interest has been sacrificed.

Where the loss has been occasioned by the inherent vice of the subject-matter sacrificed, the last rule will not apply, e.g., in the case of *Greenshields Cowie Co.* v. *Stephens & Sons* (1908), coal was shipped without negligence, and by spontaneous combustion it caught fire and water was poured down the holds in the attempt to extinguish the fire. It was held that the owners of the coal were entitled, in respect of the damage done by the water to the coal that had not ignited, to general average contribution.

Particular Average.—Sometimes the term *Particular Average* is used. This is when a particular loss is occasioned, not for the benefit of all, but by accident or otherwise. Such loss is borne entirely by the person to whom the property belongs, or the

(*v*) See *post*, p. 205.

insurer if covered by the policy, and there is no contribution from the owners of other goods being carried, e.g., a mast being swept away, or goods washed overboard accidentally.

It is sometimes difficult to draw the distinction between what should be reckoned as General and what as Particular Average. In *Shepherd* v. *Kottgen* (1878) the ship was caught in a storm and, the mast being in a very unstable condition owing to portions of the rigging having been torn away, the captain ordered it to be cut away. It was held that if anything on board, which is cut or cast away because it endangers the whole adventure, is in such a condition that it must certainly itself be lost, although the rest of the adventure should be saved without the cutting or casting away, then the destruction of the thing gives no claim for general average, i.e., it is particular average.

Somewhat akin to average is the adjustment of loss caused by a collision between two vessels. The old rule of the Admiralty Court was that where both ships were at fault, the loss sustained by both was added together and divided between them. By the Maritime Conventions Act, 1911, this rule was altered so that the damage is apportioned according to the degree in which each ship is to blame.

Bottomry and Respondentia.—During the voyage the master is what is termed an " agent of necessity " and, if occasion arise, he may hypothecate or even sell the ship or cargo. In modern times, obviously, it is rarely necessary to resort to such extreme measures owing to the facilities for rapid communication with the owners. But, should the cargo be hypothecated or sold, the shipowner must indemnify the owner of the goods, who can receive either the amount the goods actually fetched or the price they would have fetched had they reached their destination. The master has power also to pledge the owners' credit for necessaries for the ship. Where money is actually required for the purposes of the ship or cargo, and cannot be obtained otherwise, and it is borrowed on the security of the ship or cargo it is carried out by means of bonds, termed in the case of the ship a *Bottomry Bond* and in the case of the cargo a *Respondentia Bond.* A Bottomry Bond is a contract in writing, entered into by the owner or master at a foreign port, containing the conditions that if the ship arrives safely the ship itself is liable and also the borrower personally ; if the ship is lost, then the lender loses his money. The bond is void if there is a covenant to repay in any event, because the master has no authority so to covenant. A Respondentia Bond is different only in name and, in fact, the term bottomry bond is often used for a security on the cargo also. It has always been usual, and legal, to charge a high rate

of interest on such bonds owing to the risk the lender runs of losing his money. Should there be several bonds given during a voyage, they are paid off in reverse order, viz., the last is paid off first, as the presumption is that without the last the voyage could not have been completed. The bondholder's claim is superior to all other claims except for wages earned subsequently to the execution of the bond, and for salvage. But it was held in the case of the *St. Lawrence* (1880) that, if a person has advanced money for the purpose of discharging dock dues, he stands in the place of the dock company and his claim has priority of that of a bottomry bondholder.

The rules as to Bottomry and Respondentia Bonds are universally observed, being founded on ancient maritime law.

Duties of Owner or Master.—It is the duty of the owner or master to comply with all conditions of contracts of affreightment, and to observe the implied and express warranties and conditions in any policies of insurance, e.g., as to non-deviation and reasonable despatch.

Lien for Freight on landing goods.—Where goods are landed from any ship and placed in the custody of a wharfinger or warehouseman, if the shipowner gives him notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner, the goods so landed remain subject to the lien, and the wharfinger or warehouseman must retain them until the lien is discharged. If the lien is not discharged within a space of ninety days, or, if the goods are perishable, at an earlier date at his discretion, the wharfinger or warehouseman may sell the goods or so much as may be necessary to defray the charges in question.

Salvage.

Salvage is a reward payable by the shipowner, or by the owners of goods carried in the ship, to persons who save a ship or cargo from shipwreck, capture or other loss. The right to salvage arises out of an implied contract and the actual amount payable is, as a rule, assessed by the court; but express agreement fixing such amount is often made before the assistance is rendered, in which case it is not salvage.

In order that the salvors may be entitled to this reward they must show—

(1) That the work was performed voluntarily.
(2) That the services were beneficial, i.e., that the ship, or such cargo as was saved from loss, would probably have been lost without the rendering of such service.

The passengers and crew of the vessel salved are not entitled

to salvage for their exertions in attempting to save the ship or cargo. The salvors have a maritime lien over the ship, freight and cargo, and this lien has precedence of all other liens already attaching to the property salved.

Any salvage money earned is divided in varying proportions between the owners, master, officers and crew of the vessel which rendered the salvage services, if such was rendered on the high seas ; but in the case of a coast wreck or grounding of the vessel, it is frequently a matter of arrangement between the master or owners and the owners of the tug or other vessel rendering the service. In such cases, salvage money, as such, cannot be claimed.

It should be noted that salvage only applies to the saving of ship and cargo and not to human life, so that where a vessel is wrecked, and a coast life-boat removes the crew and passengers in safety, there can be no claim for salvage.

Somewhat akin to the question of salvage is the matter of wrecks and wreckage. When a vessel is wrecked the wreckage of the vessel and cargo that remains floating on the sea is termed *Flotsam* ; when goods are cast overboard during a time of peril and remain under water, they are called *Jetsam* ; and where they are thrown overboard and sink, but by reason of having been buoyed they are able to be subsequently recovered, they are termed *Ligan* or *Lagan*.

Barratry.—This is any wrongful act by the master or crew of a ship, whereby they intend to defraud the owner, charterer or insurer by running away with or sinking or deserting the ship or embezzling the cargo. Barratry is usually one of the perils insured against in Marine Insurance.

Seamen.

A seaman may not enter into any agreement to abandon any right he may have or obtain in the nature of salvage.

With the exception of certain small coasting vessels, the master of every ship must enter into an agreement in the form approved by the Board of Trade with every seaman he carries to sea as one of his crew from any port in the United Kingdom, and, in the case of foreign-going ships, such agreement must be read over to the seaman by the superintendent of a mercantile marine office and the seaman must sign in his presence. This agreement (called an " agreement with the crew ") contains all the conditions of the employment and particulars of the intended voyage. Similarly, a seaman on the termination of his engagement from a foreign-going ship must be discharged in the presence of a superintendent, and the master must sign a form relating to the conduct, character and qualification of the sea-

man. Under the Merchant Shipping Act, 1906, if, for any reason, a seaman is discharged or left behind abroad, the master must obtain the sanction of the official specified in the Act, and the fact must be endorsed on the agreement.

It is an implied term in every contract of service with a seaman that the owner or his agents shall use all reasonable means to insure the seaworthiness of the ship at the time the voyage commences, and to keep her in a seaworthy condition during the voyage. There is a statutory scale of provisions, and among many other rights of a seaman specified in the Act of 1906 is the right to be properly fed and to receive compensation for short or bad provisions. He is entitled to medical attendance also and, in certain cases, to repatriation if shipwrecked or in distress abroad.

The seaman's right to wages does not now depend on the earning of freight, and they are payable even if none has been earned. But in the case of wreck or loss of the ship, if it is proved that he did not exert himself to the utmost to save the ship, cargo and stores, he is not entitled to claim wages, Certain times are laid down in the Act for the payment of wages, but the seaman must be paid £2 or one-fourth of the wages due, whichever is the less, at the time when he lawfully leaves the ship at the end of his engagement.

The duties of a seaman are to do his work properly until the end of his engagement, to obey his superior officers, and do his best under all emergencies.

A seaman has a maritime lien on the ship and freight for his wages, which may be enforced by means of arrest and action in the Admiralty Court.

CHAPTER 8

INSURANCE

Insurance (or Assurance) is a contract whereby one person called the "insurer" or "assurer" contracts with another called the "insured" or "assured" to indemnify the former up to a specified amount *against a loss that may arise* upon the happening of some event, e.g., a loss caused by fire or burglary; or to pay a sum of money *on the happening of a specified event*, e.g., death of a certain person, or injury by accident. The consideration for such an undertaking is a sum of money called "the premium," which may be either a lump sum or a periodical payment. The instrument evidencing the contract is called a "policy" of insurance. In the case of marine insurance, the insurer is usually termed the "underwriter."

Assurance. This word is used for contracts which provide for the payment of an agreed sum of money when an *inevitable* event happens, e.g., death. It is therefore correct to speak of Life Assurance, not Life Insurance.

Insurance. This applies to the undertaking to indemnity against losses which *may or may not* occur, e.g., the destruction of a building by fire, against which a Fire Insurance Policy would provide.

In both cases, however, it is correct to speak of insurable interest.

Although there are many forms of insurance, there are four main kinds, viz., Life, Fire, Marine, and Accident; but it is possible to insure against any conceivable risk, however ridiculous it may appear.

Not all contracts of insurance are contracts of indemnity, although many are. Fire and Marine insurance are contracts of indemnity, that is, in consideration of the payment of certain annual sums by way of premium, or of a single payment, the insured is indemnified against loss that may happen by reason of fire, or against the losses incident to marine adventure respec-

tively. But Life and Accident insurances are not contracts of mere indemnity, but are undertakings to pay a certain sum of money on the death of, or in the event of injury by accident to, a specified person.

It is sometimes difficult to distinguish in principle a contract of insurance from a wager. As regards contracts of pure indemnity the difference is clear, for these are simply to *compensate* the insured. As regards life assurance, the difference is not so apparent, but it exists ; for here the contract is to pay a certain sum on the death of a specified person, and once this is fixed it is an event that is bound to happen. Accident insurance partakes of elements of both classes.

Subrogation.

In contracts of indemnity, only the amount of loss actually suffered can be recovered ; so that if an insurance company has paid the insured an amount in excess of his actual loss it can recover the excess back from him. Further, the insurer is entitled to every right of the insured to recover from any other source and thus diminish his loss ; in other words, the insurance company is entitled to stand in the shoes of the insured. This is called the doctrine of *subrogation*. In *Castellain* v. *Preston* (1883), *A* had agreed to sell a house to *B* for £3,000, and had previously insured it against fire. Before the purchase was completed the house was burnt and the insurance company paid the amount of the damage to *A*. The purchase was subsequently completed, *B* paying *A* the full price agreed. It was held that the amount paid by the company must be refunded to the insurance company, as if *A* had kept it the contract of insurance would not be a contract against loss but a speculation for gain.

Insurable Interest.

In all insurance contracts the person who seeks indemnity must have some pecuniary interest in the event against which he wishes to provide : he must stand in some legal or equitable relationship to the thing that he insures, so that as Lawrence J. said in *Lucena* v. *Crauford* (1802), " he is so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction."

Although in all kinds of insurance the insurable interest must exist, yet it need not necessarily in all cases exist both at the time of effecting the insurance and at the time of loss. In *Fire Insurance* the interest must exist throughout the transaction ; in *Life Assurance* it need only exist at the time of effecting the assurance ; and in *Marine Insurance* the insured must be

so interested at the time of the loss occurring. But in life assurance a person is not prevented from effecting an insurance on his own life. Instances of insurable interest would be a creditor insuring the life of his debtor ; but he could only insure for the amount of his debt, that being the extent of his insurable interest in the debtor's life. A wife has an interest in her husband's life, and a husband in his wife's life. A father has not, as a rule, an insurable interest in the life of his children, nor a child in the life of his father ; but it is possible under certain circumstances that he may have. A person may assure the life of a relative if he will be obliged to pay his funeral expenses at death, but he can only assure to the amount necessary for the purpose.

It is provided by the Married Women's Property Act, 1882, that if a husband assures his life, or a wife assures her life, and it is expressed on the face of the policy that such assurance is for the benefit of the wife or husband and of their family, a trust is thereby created, and the assurance money does not form part of the estate of the assured ; but, if the assurance had been effected for the purpose of defrauding creditors, they are entitled to receive out of the assurance money an amount equal to the premiums paid. Further, by the Assurance Companies Act, 1909, persons who may be under a *moral* obligation to provide for the burial of a relative may, to a limited extent, effect an assurance on that person's life, but the insurable interest does not extend beyond that.

It should be noted that the assignee of a life policy need not have an insurable interest.

Uberrimæ Fidei.

As opposed to the majority of contracts, the doctrine of *caveat emptor* does not apply to contracts of insurance. It is essential that there should be no concealment of any material fact on the part of the person effecting the insurance. If there should be non-disclosure of some material fact the contract may be rescinded ; and, of course, in the presence of false representations it may be avoided.

In other words, contracts of insurance require the utmost good faith, and are termed, therefore, contracts *uberrimæ fidei*.

LIFE ASSURANCE

A company proposing to act as Assurers in the case of Life risks is obliged to leave £20,000 on deposit with the Paymaster-General as a form of guarantee of good faith. Life assurance is a contract to pay a certain sum of money on the death of a person, in consideration of a certain premium, either in a lump sum or by annual payments. The policy, as a rule, contains

certain general clauses, e.g., prohibiting travelling abroad, in particular in tropical or unhealthy climates, or taking part in aviation, whether as passenger or pilot, unless notice be given to the company and an additional premium paid for undertaking the added risk to the life assured. Under the Assurance Companies Act, 1909, Assurance Companies are compelled to make a quinquennial valuation, that is, every five years the whole of their statistics show whether or not the policies effected are in accordance with preconceived expectations based on earlier figures. Most companies make an annual valuation; but a valuation must, by the Act, be made every five years. By making an annual valuation, a company is enabled to pay dividends on its paid-up share capital with safety; and insured persons holding "with profits" policies are similarly credited with their due proportion of profits. The expectation of life of the assured persons can be shown by the result of such statistics, and it is found that such expectation varies very slightly at each quinquennial valuation and that the expectation of life in a male is different from that in a female life. At this valuation the company allots the profits, after paying its usual outgoings, to be divided amongst the policy-holders who hold "Profit" policies. Policies may be of various classes, e.g. (*a*) Whole Life or Endowment, that is, where premiums are payable throughout life and the sum assured is payable at death, or where premiums are payable only for a stated number of years and the sum assured is paid at a specified age or at death, if earlier. (*b*) With profits or without profits, that is, where the policy-holder participates in the quinquennial (or annual) distribution of profits, or he does not do so. A policy not participating has a slightly lower premium than a participating policy. There can be variations and combinations of the different classes of policy.

The Life Assurance Act, 1774, was passed to prevent gambling in life assurance transactions; the effect of it is as follows:—

(1) No insurance may be effected by a person who has no insurable interest.

(2) The name of the person interested, or for whose benefit the policy is made, must be inserted in the policy.

(3) In all cases where the insured has an interest, no greater sum can be received than the value of his interest at the date of the policy.

This is not a mere contract of indemnity, but a definite agreement to pay on the death occurring; so that, in this case, the money must be paid eventually even though the person receiving it has suffered no loss by the death, providing of course that the assurance was properly effected, i.e., that he had an insurable interest at that time. So that where a creditor assures his

debtor's life and the debtor afterwards pays the debt, if the creditor maintains the agreed premiums he can receive the assurance money on the death of his former debtor. But where an assurance is effected by a person who has no insurable interest he can recover the premiums paid, for the rule generally is " no risk, no premium." Therefore where the contract is void, or is set aside on any ground before any risk is run, the premium paid must be returned.

The Policies of Assurance Act, 1867, gives the right to assign policies of assurance, allowing an assignee to sue in his own name. The assignee should give written notice to the assurance company, who must, on receiving it, acknowledge the receipt in writing. Further, on each policy the company must specify the place of business at which such notices may be given. Assignments of policies are usually made as a means of raising money. The assignment is in effect a mortgage of the benefits of the policy in return for a loan, on repayment of which the policy will be reassigned. The assignment may be to the Assurance Company, which will advance a certain proportion of the surrender value of the policy, or it may be to a Banker or any other lender. Sometimes the assignment may be to trustees for the purpose of effecting, e.g., a marriage settlement.

If a person who has effected a policy of assurance on his own life should commit suicide, or die by the hand of justice, the policy will be void ; save that, in the case of suicide, it will not be so if he was found to be insane at the time. Any stipulation to pay the assurance money *in any event* is void, as being contrary to public policy. But there is nothing to prevent an assurance company from narrowing their conditions ; and, in fact, policies now frequently contain conditions vitiating them in the event of the insured dying in certain ways or within a certain number of years, usually one year, except to the extent of any *bona fide* interest which may be vested in another person for valuable consideration.

The method of entering into a contract of life assurance is by filling up a Proposal Form, which becomes part of the contract. It is important that it should be completed with great care, in view of the remarks made above as to insurance being a contract *uberrimæ fidei*.

Many persons assure their own lives for a small amount for the sole purpose of ensuring the payment of their funeral expenses at death.

FIRE INSURANCE

A company intending to act as Insurers against Fire risks is bound by law to deposit £20,000 with the Paymaster-General

as a form of guarantee of good faith. Fire Insurance is a contract whereby the insurer undertakes, in consideration of the payment of a premium either in a lump sum or by instalments, to *indemnify* the insured against any loss or damage caused by fire within a specified period. The policy states a maximum amount above which the insured will not be indemnified, but it does not necessarily follow that he will be paid that amount on the occurrence of a fire. He will be paid only a sum within the limit specified and no more than will make good the damage suffered. So that, obviously, it is necessary that the insured should have an insurable interest in the subject matter of the insurance, otherwise he incurs no loss. Any existing right or interest is sufficient to constitute an insurable interest, so that, for instance, a warehouseman may insure his customer's goods, or a pawnbroker his pledges, and an insurance company may re-insure the property of which it is the insurer.

In order to prevent persons from making profit out of fires, or from wilfully setting fire to their property in order to gain the insurance money, the Fire Prevention (Metropolis) Act, 1774, was passed. This Act provides that, when a building in the Metropolitan district is burned down, any interested person may procure that the insurance money shall be laid out in repairing or re-building the premises. Several conflicting decisions have been given as to the application of this Act. By the Metropolitan Fire Brigade Act, 1865, it is provided that any damage caused by the Metropolitan Fire Brigade in the due execution of their duties shall be deemed to be damage by fire within the meaning of any policy of insurance against fire, and the insurance company would therefore be liable.

As in other forms of insurance the utmost good faith is requisite, and there are usually other requirements, e.g., that the risk shall not be increased subsequently to effecting the insurance; and it is almost invariably a condition precedent to maintaining a claim against the insurance company that the insured must give notice of any loss within a certain number of days of the happening of the event which caused it, that he shall not remove any of the goods without the consent of the insurer, and that the premiums shall be punctually paid.

The policy usually contains certain clauses, such as a "contribution clause," which runs "If at the time of any loss or damage happening to any of the property hereby insured there be any other subsisting insurance or insurances effected by the insured or by any other person or persons on his behalf covering such property, either alone or together with any other property, this company shall not be liable to pay or contribute more than its rateable proportion of such loss or damage." The "average

clause" provides that where the value of the property insured exceeds the amount insured, the insured and the company shall share all losses, total and partial, in the same proportion that the sum insured bears to the value of the property. The intention of this clause is to prevent the insured from benefiting by any under-insurance. So where a person insured a house, taking the value as of that part appearing above the ground level, and assuming that there was no risk of the foundations being destroyed, and the house was burnt down to the ground level, he could not recover the full amount from the company. He would have to bear proportionately the amount by which he had under-insured.

An insurance on property *prima facie* covers only the loss of or damage to the property insured, and does not extend to consequential damage; so that, unless expressly insured against, an insurance on property does not cover loss of rent, business profits, wages of workmen rendered idle, etc.

A fire insurance policy cannot be assigned without the consent of the insurance company, and the benefit of the insurance does not run with the property, so that on the sale of the insured property the purchaser must effect a fresh insurance in order to cover himself against loss.

It was held in the case of *Grover and Grover* v. *Matthews* (1910), that if an agent should make a contract of fire insurance without authority, the principal cannot ratify his act after the occurrence of any loss of the subject matter by fire of which he has knowledge.

MARINE INSURANCE

Marine Insurance is a contract whereby the insurer undertakes to indemnify the insured against losses incident to marine adventure accruing to the ship, cargo, freight or other subject matter of a policy, during a given voyage or voyages, or during a given length of time. The indemnity may be extended to cover losses on inland waters, or any land risk incidental to a sea voyage. The law on this form of insurance has been codified by the Marine Insurance Act, 1906. A form of policy which may be used is given in the Act; and it also contains rules for the construction of all policies not in this form, unless expressly excluded by the terms of the policy. Marine insurance may be effected by means of an agent, thereby differing somewhat from most forms of insurance.

Insurable Interest.

It is essential that the insured should have an insurable interest, or an expectation of acquiring such, otherwise the insurance is void. So also are policies made "interest or no

interest" or "without further proof than the policy itself" (called for brevity "p.p.i." policies, that is, "policy proof of interest") or "without benefit of salvage to the insurer" or in any similar terms. In fact, gambling on loss by maritime perils is a criminal offence punishable by fine or imprisonment under the provisions of the Marine Insurances (Gambling Policies) Act, 1909. The insurable interest necessary in the case of marine insurances is where the insured stands in any legal or equitable relation to the adventure or to any ship, goods or other movables at risk therein, in consequence of which he may benefit by the safety or due arrival of the property, or may be prejudiced by its loss, damage or detention, or may incur liability in respect thereof. Such interest must exist at the time of the loss; it need not necessarily exist at the time of effecting the insurance, but may be acquired during the currency of the policy, and it may even be acquired after the occurrence of a loss if the insurance is effected "lost or not lost," unless the insured was aware of the loss at the time. The following would be examples of an insurable interest—the owner or the mortgagee of property; a bottomry bondholder, to the extent of the amount payable to him under the bond; an insurer (Insurance Company or Underwriter) who may re-insure to the extent of his liability; the master and crew for their wages, although the charterer or owner would, as a rule, cover any such risk; a creditor who advances freight. But although a mortgagee or a bondholder has an interest in the property to the amount charged thereon, yet it was held in *Moran Galloway & Co.* v. *Uzielli* (1905) that a creditor has no insurable interest in the debtor's property merely on the ground that its loss would diminish his chance of obtaining ultimate satisfaction of the debt.

Warranties.

There are generally certain express warranties in marine policies, such as the date of sailing and the safety of the ship at the time of insuring. In addition to express warranties, there are certain implied warranties mentioned in the Act of 1906—

(1) That all material facts have been disclosed and no untrue representations made.
(2) That at the commencement of the voyage the ship is seaworthy for the purposes of the particular adventure.
(3) That the adventure is a lawful one.
(4) That a change of voyage or direction, i.e., deviation, shall not take place.

The breach of any of these warranties will absolve the insurer from any liability and enable him to avoid the contract, so that

these differ from warranties under the ordinary law of contract. Representations made in the negotiations prior to the contract must be substantially correct, otherwise the policy will be voidable.

Policies

It is necessary that all contracts of marine insurance shall be in the form of a " Policy," specifying particulars mentioned in the Act. Policies may be of several kinds, the more important being—

(1) *Voyage Policies*, covering the risk during a particular voyage only.

(2) *Time Policies*, covering the risk for the time the policy remains in force, which must not ordinarily be for more than one year. But, if a voyage remains uncompleted at the expiration of the time, the period may be extended and the subject-matter be held covered until the ship's arrival, or for not more than thirty days thereafter, provided the policy contains a " continuation clause."

(3) *Valued Policies*, where the amount is fixed beforehand and stated in the policy, and this statement of amount is conclusive in the event of a loss.

(4) *Unvalued Policies*, wherein the value of the subject-matter is not stated. The amount to be paid in the event of a loss has to be assessed, up to the limit of the sum assured, after the loss.

(5) *Mixed Policies*, which are time policies in which the voyage also is specified.

It is the usual custom for marine insurances to be effected through the agency of an Insurance Broker, and he is personally liable to the underwriters for the premium. A memorandum of the terms is drawn up by the broker, and this is initialled by the underwriters for the amount that each proposes to underwrite. Such a document is known as " the slip," and it is from this slip that the formal policy is prepared. The slip itself has no binding force and the court will look at it only for collateral purposes, such as to determine the date of undertaking the risk.

Lloyd's S.G. Policy.—The policy is a document in formal terms, and the usual form is in accordance with that scheduled to the Act of 1906 and is known as Lloyd's S.G. policy. The following is a reprint, with the exception of the words in italics, which have been inserted to make the form more intelligible.

S.G. £..... BE IT KNOWN THAT *A and/or as Agent* as well in *his* own Name as for and in the Name and Names of all and every Person or Persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause *himself* and

them, and every of them, to be insured, lost or not lost, at and from *Liverpool* Upon any kind of Goods and Merchandises, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture, of and in the good Ship or Vessel called the *Speedy*, whereof is Master, under God, for this present voyage *George Smeeth*, or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the said Ship, or the Master thereof, is or shall be named or called; beginning the adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship *Speedy* upon the said ship, etc. . . . and so shall continue and endure, during her Abode there, upon the said ship, etc.; and further, until the said Ship with all her Ordnances, Tackle, Apparel, etc., and Goods and Merchandises whatsoever shall be arrived at *Buenos Aires* upon the said Ship, etc., until she hath moored at Anchor Twenty-four Hours in good Safety, and upon the Goods and Merchandises until the same be there discharged and safely landed; and it shall be lawful for the said Ship, etc., in the Voyages to proceed and sail to and touch and stay at any Ports or Places whatsoever *on the East Coast of South America* without Prejudice to this Insurance. The said Ship, etc., Goods and Merchandises, etc., for so much as concerns the Assured by Agreement between the Assured and Assurers in this Policy, are and shall be valued at *£50,000.* Touching the Adventures and Perils which we the Assurers are contented to bear and so take upon us in this Voyage, they are, of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People, of What Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises and Ship, etc., or any part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants, and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguards, and Recovery of the said Goods and Merchandises and Ship, etc., or any part thereof, without prejudice to this Insurance; to the charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his sum herein assured. And it is especially declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurances shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London.

And so we, the Assurers, are contented and do hereby promise and bind ourselves, each one for his own part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators and Assigns, for the true Performance of the Premises, confessing ourselves paid the consideration due unto us for this Assurance by the Assured *A* at and after the Rate of ***Five Pounds per Cent.***

IN WITNESS whereof we, the Assurers, have subscribed our Names and Sums assured in *Liverpool.*

N.B.—Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from Average, unless General, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are warranted free from Averages under Three Pounds per Cent. unless general, or the Ship be stranded.

Reference is made in Chapter 9 to certain of the clauses contained above, e.g., deviation, and all are the result of years of experience and of many legal decisions. But perhaps a passing consideration may be given to some other of the expressions included in the policy.

"*As well in his own Name as for . . .*" This form of words is inserted so that the policy will extend to all persons possessing an insurable interest at any time during the continuance of the risk, provided the person effecting the policy intended to insure on their behalf.

"*Lost or not lost.*" This is an important phrase, and entitles the assured to the benefit of the insurance, provided of course he has an interest in the subject-matter, even if it was actually lost at the time of effecting insurance. If, however, he knew of the loss at the time, the policy is void; and if the underwriter knew at the time that the ship had arrived safely, he must return the premium.

"*At and from Liverpool . . .*" The risk begins at the commencement of the voyage for which the insurance is effected where the word "from" is used, but where the words "at and from" are used, if the ship is then in a place of safety, the risk begins at once. If she is not yet in a place of safety, the risk arises when she arrives at that place.

"*The good Ship . . . called the Speedy, whereof is Master . . .*" It is necessary that the name of the ship and the name of the master be inserted.

"*Beginning the adventure upon the said Goods.*" The risk on the goods attaches only when they are actually on board, unless otherwise specifically agreed.

"*Until she hath moored . . . in good Safety, and upon the Goods . . . until the same be there discharged and safely landed.*" The risk then continues until the goods are landed safely in the customary manner, and within a reasonable time after arrival at the port of discharge.

"*To proceed and sail to and touch and stay at . . .*" "Any ports" only means those usual ports of call on the particular

voyage, and does not mean any ports outside those customary on that voyage.

"*Valued at.*" The amount of insurance and its valuation has already been considered.

"*The Adventures and Perils . . .*" Many of the perils insured against are enumerated. Under "all other perils . . ." fall perils *ejusdem generis* (of the same kind), as those specifically set out in the policy.

The "*suing and labouring clause,*" marked with an asterisk (*), has for its object the making of efforts to preserve the insured property in cases of accident. The rights are in no way prejudiced by anything done in furtherance of such an object, and even if the efforts are unsuccessful, the insured is entitled to expenses thereby incurred.

The whole question of marine insurance is so broad that it cannot be adequately dealt with herein, and, for further details and interpretation of the policy reference should be made to the special text-books on the subject.

Losses.

There are two kinds of losses—

(1) PARTIAL, where there is only partial damage to the subject-matter.

(2) TOTAL, where there is—

(*a*) *Actual Total Loss*, that is, the subject-matter has been totally destroyed, or irreparably damaged, or the owner is irretrievably deprived of it, or

(*b*) *Constructive Total Loss*, that is, the subject-matter is so damaged as reasonably to justify the owner in abandoning it, or where it cannot be preserved from becoming an actual loss without expenditure in excess of its value when recovered. On this latter point it was decided in the case of *Sailing Ship Blairmore Co.* v. *Macredie* (1898) that the insurers cannot convert a constructive total loss into a partial loss by incurring an expense which a prudent owner would not have incurred, by raising the vessel which had been sunk in deep water and abandoned by the owner.

On the occurrence of a loss, notice must be given to the underwriter as soon as possible; but, in the event of a partial loss, no claim can be made until the extent of the loss has been ascertained. On a total actual loss the underwriters are liable

on a valued policy for the full amount mentioned in the policy, and on an unvalued policy to whatever is the insurable value of the subject-matter. But in the case of a constructive total loss the underwriters are not liable for these amounts unless notice of abandonment has been given within a reasonable time. On a partial loss, as a rule, the underwriters are not liable to the full amount in the case of damage to a ship, the shipowner must bear a proportion of the loss as he is getting benefit by having his ship, presumably partly worn by wear and tear, repaired with new material. Partial loss to the cargo is adjusted by certain recognized rules based on the different values of the goods caused by the damage. Such adjustment is usually settled by the respective brokers on behalf of the insurer and the insured.

Notice of Abandonment.

Where the ship has been abandoned, notice thereof must be given to the underwriters, either verbally or in writing. But in whatever form it may be given such notice must be certain, unconditional, must relate to the whole thing, and must be given at the earliest opportunity. The effect of such notice is that the underwriter succeeds, by the doctrine of Subrogation, to the interest of the assured as from the time of the happening of the loss.

Average.

The matter of Average is considered in Chapter 7 on Shipping, but it may be mentioned here that the following abbreviations relating to Average are used in connection with marine insurance :

F.G.A. means Foreign General Average, that is to say, that in the event of goods being liable to General Average the rules to be applied will be those of the country of destination, that is, the law of the place where the adjustment is made ; f.p.a. means Free from Particular Average, that is to say, the assured can only recover where the loss is due to a general average sacrifice.

In order to bring into line the laws and customs of various countries in relation to this important question, a set of international rules was drawn up in 1877, known as the *York-Antwerp Rules.* These rules were revised in 1890 and the original rules rescinded by the Conference of the Association for the Reform and Codification of the Law of Nations, held at Genoa. The revised rules are still known as the York-Antwerp Rules.

Return of Premium.

Where the consideration for the payment of the premium totally fails, the premium must be returned, e.g., if the insurance is void from the beginning; and, if only a proportion of the risk is run, a proportionate amount of the premium must be returned, e.g., where some only of the goods are shipped. Obviously, however, this rule does not apply to an insurance effected "lost or not lost," where the ship had at the time, but unknown to the insurer, actually arrived in safety. Once the risk has commenced to run no part of the premium can be returned.

Double Insurance.

Where the insured effects two or more policies on the same subject-matter, so that he is over-insured, the excess cannot be recovered, but he may sue on which policy he prefers. As between the insurers they are liable to contribute rateably their proportionate parts. Should the insured actually have received any excess, he is bound to hold that amount in trust for such of the insurers as may be found to be entitled to it.

Re-insurance.

Where an insurer has already undertaken a risk he may himself insure with another office in order to lighten his own risk. This is known as re-insurance. Certain companies exist which specialize in re-insurance.

Assignment.

A policy of marine insurance is assignable unless forbidden in the policy. But the assignee takes the policy subject to any defences that could be set up against his assignor. The assignment is by indorsement or, if the policy is indorsed in blank, by delivery.

ACCIDENT INSURANCE

In accident insurance the insurer is not subrogated to the rights of the insured, for accident insurance is not, strictly speaking, a contract of indemnity; it is, rather, an undertaking to pay an agreed sum on the happening of a specified event, viz., death or certain forms of injury from accident. So a person who has been injured in an accident may both draw the insurance money from the insurance company and claim damages in respect of the injury from the negligent party. No definite rules can be laid down as to accident insurance policies, for they differ so widely. An insurance policy that purports to indemnify a third party against liability for accident is not an accident policy —to be an accident policy it must be a personal contract only.

OTHER FORMS OF INSURANCE

As already stated, it is possible to insure against every conceivable risk, and many "freak" policies are issued from time to time. The more usual forms of insurance, other than those already considered, are against Burglary and Larceny, Disease and Sickness, Loss of Profits, etc.; also the insurance of Motor Cars and Plate Glass, the fidelity of employees by what is known as Fidelity Guarantee, against any liability to third parties, such as Employers' Liability under the Workmen's Compensation Acts, and at Common Law. There is also a system of compulsory National Insurance for certain classes of workers in respect of Health and Unemployment. The principles are the same in all forms of insurance, although in some details they may differ slightly.

STAMPING OF POLICIES

	£	*s.*	*d.*
Life Assurance.			
Where the sum insured does not exceed £10	0	0	1
Exceeding £10 and not exceeding £25	0	0	3
Exceeding £25 and not exceeding £500, for every £50 or fractional part thereof	0	0	6
Exceeding £500 and not exceeding £1,000, for every £100 or fractional part thereof	0	1	0
Exceeding £1,000, for every £1,000 or any fractional part thereof	0	10	0
Fire Insurance.			
Sixpence, which may be by an adhesive stamp.			
Marine Insurance.			
For or upon any Voyage Policy—			
Where the sum insured does not exceed £250.	0	0	3
£250–£500	0	0	6
£500–£750	0	0	9
£750–£1,000	0	1	0
Where it exceeds £1,000, for every £500 and any fractional part thereof	0	0	6
For Time Policies.			
For any time not exceeding six months—Three times the amount payable on a voyage policy.			
Exceeding six months but not exceeding twelve months—six times the amount.			
Accident Insurance.			
Accidental death, or personal injury, or periodical payments during sickness	0	0	6
Loss or damage to property	0	0	6

CHAPTER 9

CARRIAGE AND AFFREIGHTMENT

CARRIAGE

The sale of goods would not be of much benefit unless the goods could also be transported to the buyer. The law of Carriage, therefore, is second in importance only to the law of Sale.

Common Carriers.

A common carrier is one who undertakes to transport from place to place, for hire, the goods of such persons as choose to employ him. He must publicly profess to carry goods for hire as a business, and not as a casual employment ; so that a man who undertakes occasional jobs is not a common carrier, nor is a person who carries passengers only. He must also carry goods from town to town or from country to country, by carriages, barges, or ships ; so that a lighterman or barge owner is a common carrier, but a man who undertakes to carry goods within a town and who does not carry from one distinct place to another is not a common carrier within the meaning of the term, nor is a carman who does odd jobs, nor a furniture remover who makes special contracts with his customers. Railway companies are only common carriers as to goods which they ordinarily carry, as was decided in *East India Railway Co.* v. *Kalidas Mukerjee* (1901). Railway companies are not regarded as insurers of the safety of their passengers, but they are liable for injuries happening to passengers through negligence. The party claiming for injury must prove the negligence, except where the vehicle, at the time the injury was suffered was under the control of the company, e.g., a collision, in which case negligence will be presumed and it will be for the company to show that there was, in fact, no negligence on its part.

Liability of Carriers.

Until comparatively recent times, all land carriage was by road vehicle, and it was a comparatively easy matter for carriers to combine with thieves "in such a clandestine manner as would not be possible to be discovered." (*w*) In order, therefore, to prevent such transactions, the common law liability of carriers was very great. They stood in the position of insurers, and were liable for all losses except those caused by—

(1) The Act of God;
(2) The King's enemies;
(3) Inherent vice in the goods carried;
(4) Negligence of the person whose goods are carried.

Now, however, the liability has been to some extent lessened by statute.

It has always been possible for carriers to make special contracts with their customers and thus limit their liability. This was done by putting up notices in the warehouse, and this was held to constitute a special contract, if it could be proved that the notice had been brought to the knowledge of the customer, but not otherwise. Even this special contract, however, would not limit the carrier's liability for gross negligence.

Carriers Act, 1830.

Owing to the unsatisfactory position, the Carriers Act, 1830, was passed, and this enacts—

(1) That no common carrier by land for hire shall be liable for any loss of, or injury to, any gold or silver coin, precious stones, jewellery, watches, clocks, negotiable paper, title deeds, pictures, gold or silver plate or plated articles, china, furs, silk, lace, etc., contained in any parcel either carried for hire or accompanying the person of any passenger when the value exceeds £10, unless at the time of delivery of such parcel to be carried the value and nature of the articles shall have been declared and an increased charge paid or agreed to be paid. The amount is taken as that of the aggregate value of the parcel. This is now increased to £25 by the Railways Act, 1921, and silk is deleted from the list.
(2) The increased charge can only be demanded if a notice in legible characters is conspicuously posted in the office or warehouse where the parcels are received, and it is then binding without proof of it having come to the knowledge of the customer.
(3) A carrier who does not exhibit such a notice is not entitled

(*w*) Lord Holt in *Coggs* v. *Bernard*, see *ante*, p. 77.

to the benefits of the Act so far as the right to the increased charge is concerned. But apparently, in any event, he is entitled to a declaration of the value and nature of the goods, according to the decision in *Caswell* v. *Cheshire Lines Committee* (1907), where it was held that, if a passenger's personal luggage contains articles over £10 in value of the kind enumerated in Section 1 of the Act, the company will not be liable for the loss in the absence of a declaration of value.

(4) The carrier is not exempt, therefore, from his common law liability unless the notification and demand have been made, or unless the declaration of value has not been given. When the extra charge is made, the customer is entitled to a receipt.

(5) Other than as provided by the Act, no public notice can limit the liability of the carrier.

(6) Nothing in the Act affects any special contract between the carrier and the customer.

(7) The Act does not protect the carrier from any loss arising from the felonious acts of any person in his employ. But, in *Shaw* v. *Great Western Railway* (1894), it was held that a carrier can protect himself from such liability by special contract, and he then only remains liable for gross negligence, e.g., railway rates are quoted as at "Owner's risk" and "Company's risk", and the owner of goods may elect under which he will consign his goods, the former being the cheaper rate.

(8) As regards goods which are not of the kind mentioned above, or if the value does not exceed £10, the common law liability of the carrier remains, in the absence of a special contract, and no public notice to the contrary is of effect.

(9) It was held in *Dyke* v. *South Eastern and Chatham Railway* (1901), that the Act applies equally to personal luggage accompanying a passenger as to that sent unaccompanied; and this was followed in *Caswell* v. *Cheshire Lines Committee* (1907), cited above.

Railway and Canal Companies.

Very soon after 1830 traffic by road began to be superseded by railway and canal traffic. The Railway and Canal Companies invariably contracted out of the Carriers Act, 1830, by special contract, as permitted under the Act, and so consignors were left without any remedy in case of loss, etc. Parliament then stepped in and passed the Railway and Canal Traffic Act, 1854, which deals with limitation of liability, and provides—

(1) That every railway company shall afford reasonable facilities for receiving, forwarding, and delivering traffic.

(2) That any notice given by the company limiting its liability for loss or injury to animals or goods carried by the company shall be null and void, and the company shall be liable for all loss occasioned by the neglect or default of the company or its servants

(3) But that the company may make a special contract, which must be signed by the consignor or his agent, and may thus limit its liability by any agreement, *provided* that the terms of the contract are held by the court to be just and reasonable.

(4) That the company's liability for loss is limited for (*a*) horses to the sum of £50, (*b*) neat cattle £15, and (*c*) sheep and pigs £2 per head, unless a higher value is declared and an increased rate paid, or agreed to be paid, to be notified as under the Carriers Act. [These sums are increased to £100, £50 and £5 respectively under the Railways Act, 1921.]

The facilities afforded under paragraph (1) above include the collection and delivery of parcels and goods by van or dray, and the maintenance of receiving offices for parcels traffic. The special contract mentioned in paragraph (3) is frequently to be found in the consignment notes signed and handed to railway carmen when goods are collected.

Railway companies may make contracts exempting themselves from liability beyond the limits of their own lines, and to these contracts the Act does not apply.

By the *Regulation of Railways Act*, of 1868, it is provided that where a company, by through booking, contracts to carry any animals, luggage or goods partly by rail and partly by sea, or partly by canal and partly by sea, a condition exempting the company from liability for any loss by danger of seas and navigation shall be good and considered to be incorporated in the contract if published in a conspicuous manner in the office where the booking is effected, and printed legibly on the receipt or freight note.

By the *Railway Companies* (*Accounts and Returns*) *Act*, 1911, every railway company must annually prepare accounts and returns in accordance with the form set out in the Act, and must submit their accounts to their auditors in that form.

By the *Railways Act*, 1921, a Rates Tribunal is constituted, which has the power to frame regulations governing the rates, charges, and conditions of carriage of traffic of all sorts. The Act extends the definition of a common carrier to include a common

carrier by land who is also a carrier by water; therefore, in such cases, the Land Carriers' Act applies to carriage by water also. But the Act does not take effect until a date to be announced by the Rates Tribunal.

By the *Merchant Shipping Act*, 1894, it is provided that when loss or damage occurs to goods, without the *actual fault or privity* on the part of the owner of the ship, he is not liable at all where—

(1) Goods or other things on board are lost or damaged by reason of fire on board the ship;

(2) Gold, silver, precious stones, watches, jewellery, etc., are lost or damaged by reason of any robbery, embezzlement, making away with or secreting thereof, where the owner or master had not, at the time of shipment, received a written declaration of their true nature and value.

Where any loss has occurred without the fault or privity of the owner, viz.—

(*a*) Where any loss of life or personal injury is caused to any person being carried in the ship;

(*b*) Where any damage or loss is caused to any goods, merchandise, or other things on board;

(*c*) Where any damage to person or property in or on another vessel, or to the vessel itself, is caused by improper navigation of the ship—the limit of liability is as follows—

(i) In respect of loss of life or personal injury (with or without damage to vessels or goods) to an aggregate amount not exceeding £15 for each ton of the ship's tonnage;

(ii) In respect of damage to vessels or goods (with or without loss of life or personal injury) to an aggregate amount not exceeding £8.

By the further Act of 1900, this limitation of liability was extended to any loss of or damage to property or rights of any kind, whether on land or water, resulting from improper navigation or management of the ship, without the fault or privity of the shipowner.

Where there is a loss of life as well as loss of goods, the claims in respect of the loss of life are entitled to £7 per ton and the remaining claims for loss of life, if any, and the claims for loss of goods, rank equally against the balance of £8 per ton.

When Liability of Carrier Ceases.

The liability of a carrier ends on delivery, actual or constructive, of the goods carried, to the consignee or his agent, or where the goods are tendered at the address to which con-

signed and that turns out to be a wrong address. Similarly, where goods are forwarded to a station " to be called for " and are not removed within a reasonable time. Where goods still remain with the carrier and the transit has come to an end in such circumstances as above mentioned, the carrier becomes a warehouseman and his liability as insurer ceases, he being in future liable only for ordinary and reasonable custody of the goods.

Carriage of Passengers.

The question of the liability of railway companies as insurers of passengers has already been considered ; and although not strictly within the purview of a chapter on carriers, possibly a few words on the general question of the carriage of passengers by railway may prove of interest. Railway companies are usually bound by their particular statutes to carry all passengers who tender the proper fare, unless they are in such a condition as to prove an annoyance to other passengers or to cause detriment to the companies' premises or rolling stock. Further, where a company advertises a certain train to arrive or depart at a specified time, the company may be liable in damages if a person suffers expense or other harm by reason of considerable delay caused through their negligence, even though a general condition issued by the company may be that the company does not guarantee the punctual starting or arrival of their trains. Where, as is usual, the company issues a ticket stating that they will not be liable for loss or inconvenience caused by delay unless such delay be occasioned by the wilful misconduct of the company's servants, it has been held that such a condition is not unreasonable and in such cases there is no liability unless there is actually wilful misconduct on the part of the company's servants. It was held in *Le Blanche* v. *London and North Western Railway Co.* (1866) that in particular circumstances, although not as a matter of course, a passenger may be justified in taking a special train and charging the cost to the company.

The taking of a ticket only entitles the passenger to be carried to the destination named therein within a reasonable time. The act of taking a ticket is the entering into a contract, and provided that the passenger is aware, or could reasonably become aware, of the company's Conditions and By-laws, he is bound thereby. Usually a condition is that the passenger will be carried by any train unless it is full. If it is full, therefore, he must wait for the next train. Another condition is that the passenger must travel only in the class of carriage for which the ticket has been issued, unless he tenders the excess fare when requested, and if he breaks his contract he can be prosecuted. So that if the third-

class carriages are full the passenger has, strictly speaking, no right to travel in a superior-class carriage without paying the difference between the two fares, but this condition is not always enforced by the companies. A passenger is obliged to show his ticket, whether an ordinary ticket or a season ticket, when asked to do so by any of the company's servants, and if he fails to do so he must, on demand, pay the full fare from the point of starting to his destination. Should he fail to do this he can be asked for, and he must give, his name and address, and on refusal he can be arrested by the company's servants. They have no power to detain the passenger provided that he furnishes his name and address.

Duties of Carriers.

The duty of a carrier is —

(1) To carry all goods of the class he professes to carry for anybody who delivers them to him, provided he has room in his carriage and the person offers to pay the proper charges.

(2) To carry by his ordinary route, not necessarily by the shortest, even though he is entitled to charge a mileage rate, and with reasonable diligence, i.e., without unreasonable deviation or delay.

(3) To deliver the goods to the consignee at the place designated by the consignor, unless the consignee requires delivery at another place, when he may deliver them accordingly.

(4) As held in *Scothern* v. *South Staffordshire Railway Co.* (1853), where there is a right in the consignor to change the destination during transit, the carrier must, on receiving due notice, deliver to the new destination, e.g., where an unpaid seller of goods exercises his right of stoppage *in transitu*. Should the carrier disobey the directions of the consignor, he will be responsible in the event of their non-delivery at the place indicated.

Ordinarily, when the carrier has offered delivery of the goods and the goods are refused, his liability as a common carrier comes to an end. He then becomes only an involuntary bailee and, as such, is responsible merely for negligence, either his own or that of his servants. He cannot be compelled to accept goods for transit if his carriage is already full, or if the goods are such as he does not profess to carry; although railway companies may be compelled, under the provisions of the Railway and Canal Traffic Act, 1854, to provide facilities as mentioned above.(*x*)

(*x*) See *ante*, *p.* 211.

Further, the carrier may, under the Nitro-Glycerine Act, (*y*) refuse to accept goods of a nature such as to subject him to risks of an extraordinary kind; and, if a consignor delivers goods of a dangerous character to a carrier, who is ignorant of their nature, he is liable for any damage that ensues to the carrier. Thus, in *Bamford* v. *Goole and Sheffield Transport Co.* (1910), the defendants, who were forwarding agents, delivered to a common carrier casks with the description of "general cargo" but which actually contained, as defendants knew, ferro-silicon, and this during the transit emitted poisonous gases which caused the death of the carrier. Evidence showed that such material was liable to be dangerous under certain conditions, but that neither the defendants nor the carrier knew the fact and, therefore, defendants were not guilty of negligence. Defendants were, however, held liable in damages for having caused the death of the carrier.

Ordinarily, the person to sue the carrier is the consignee, the consignor being but the agent to retain the carrier on his behalf; but, where no property in the goods has been acquired by the consignee, the consignor is the proper person to sue.

Passengers' Luggage.—It is the duty of a railway company to carry passengers' personal luggage up to a certain weight free of charge; and in respect of this the company is a common carrier and an insurer of its safety; and it would appear, too, that the company has the same liability in respect of personal luggage conveyed in the carriage with the passenger, save that if the passenger's interference with the company's exclusive control of his luggage contributes to its loss or injury the company would not be liable. So that the company will be liable where, as in *Great Western Railway Co.* v. *Bunch* (1888), a passenger arrived at the station a reasonable time before the time of departure of the train and, leaving his luggage with a porter, he went to another part of the station for a purpose necessary for travelling, and the luggage was lost. But where the luggage is left in the charge of a porter under such circumstances as to make him the agent of the passenger the company will not be liable. In *Welch* v. *London & North Western Railway Co.* (1885), where the passenger missed his train and, intending to travel by the next train, left his luggage in charge of a porter and, during the interval, went to an hotel and the luggage was lost, it was held that the company were not liable. Where the goods carried by a passenger do not fall within the definition of passenger's luggage, the company will be liable only as a voluntary bailee. A voluntary bailee in this respect is one who does the act of carrying without reward. He is, therefore, only liable for gross

(*y*) Carriage and Deposit of Dangerous Goods Act, 1866.

negligence. On the other hand, where the luggage is carried for a charge, the company will be an ordinary bailee and therefore liable for ordinary negligence. There are many conflicting decisions as to what is or is not passengers' personal luggage, but it would appear to mean not only wearing apparel, but also all things which for convenience a passenger would, in the circumstances of the case, carry with him. Where goods are deposited in a cloak-room, the railway company will be liable as an ordinary bailee, subject to any notices limiting its liability.

Termination of Liability.

The liability of the company, in respect of any goods, terminates on the goods being delivered to the owner or his agent; and one of the porters of the company may be such an agent. In *Hodkinson* v. *London & North Western Railway* (1885), a passenger, on arriving at her destination, instructed a porter to remove her luggage from the van and take care of it as she was walking to her home and would send for the luggage. The luggage was lost and it was held that the company was not liable.

Where goods are addressed to a consignee at a certain station "to be called for," the company's liability as a common carrier ceases after the goods have arrived at the station, and they are then merely bailees for hire, and liable only in the event of negligence; but the general rule that applies to all goods carried by companies is that they must keep them for a reasonable time at their risk as common carriers, so that the consignee may have a chance to claim them.

A railway company is bound by what are known as "equality clauses" in the Railway Clauses Consolidation Act, 1845, and in the special Acts relating to the company. By these clauses the company has a duty to charge to all persons equally in respect of carriage of goods, and the Railway and Canal Commission is empowered, *inter alia*, to restrain any railway or canal company from giving undue preference to any particular persons or any particular description of traffic.

AFFREIGHTMENT

At common law, shipowners were liable for goods carried on a voyage to the same extent as carriers by land; but special contracts in the form of either a charter party or a bill of lading were made between the consignor and the shipowner exonerating the latter from the liability as a common carrier and from liability resulting from perils of the sea and other accidents. By the Merchant Shipping Act, 1894, it is now provided that—

(1) The owner of a British ship is not liable for any loss or damage to goods on board caused by fire happening without his actual fault or privity.

(2) Nor for loss or damage (without his actual fault or privity) caused by robbery, embezzlement, or theft, of any gold, silver, diamonds, jewels or precious stones, unless the nature and value thereof are at the time of shipment declared in writing to the shipowner or master.

(3) Where loss or damage has occurred without the actual fault or privity of the owner of a British or foreign ship, he is not liable in respect of personal injuries (either alone or with loss to ship or goods) to an aggregate amount beyond £15 per ton of the ship's tonnage, nor in respect of injuries to ship or goods either on land or water (whether there be in addition personal injuries or not) to an aggregate amount beyond £8 per ton. But it seems that this provision may be excluded by express contract in the Bill of Lading or Charter Party.

Affreightment is the name given to a contract which has for its object the carriage of goods by sea for a price which is called "freight." It is found in two forms, viz., Charter Party and Bill of Lading.

Charter Party.

Where a shipowner lets the ship, or some part of it, for the conveyance of goods for a particular voyage, or for a specified period, to a person (who is termed the charterer) for a sum of money which that person undertakes to pay as freight for their carriage, such an agreement is known as a charter party. It may or may not be under seal, and in either case it must be stamped, which may be done by means of a 6*d.* adhesive stamp, if the contract is not sealed, provided that such stamp is cancelled by the person who signs the agreement last and thus makes it of binding effect. Generally, the ship remains in the possession of the owner, the charterer acquiring only the right to put his goods on the vessel to have them carried, but the vessel may be altogether in the power of the charterer for a specific voyage or time.

Form of Charter Party.—Certain trades have forms peculiar to themselves, but there are stipulations that are usually found in all charter parties. The following is a digest of a typical charter party—

> It is this day mutually agreed between *A. B.*, agents for owners of the good ship or vessel called . . . . . of the burden of . . . . . tons register measurement or thereabouts, whereof *C. D.* is master, now in the port of . . . . . and *E. F.* merchant of . . . . . that the said ship being tight, staunch and strong, and every way fitted

for the voyage shall with all convenient speed proceed to . . . . . or so near thereto as she may safely get and there load a full and complete cargo of lawful merchandise, say about . . . . . tons in weight and being so loaded shall proceed to . . . . . or so near thereunto as she may safely get and deliver the same in the usual manner agreeably to bills of lading. Freight to be paid on unloading and right delivery of the cargo . . . . running days (Sundays and holidays excepted) are to be allowed the said . . . . . if the ship is not sooner despatched for loading in . . . . . and . . . . . like days for all purposes abroad, and . . . . . days on demurrage over and above the said lay days and the time herein stated at £ . . . . per day paying day by day as the same shall become due. Charterer's liability under this charter party to cease on the cargo being loaded, the master and owner having a lien on cargo for freight and demurrage.

The act of God, the King's enemies, restraint of Princes and Rulers, fire and all and every other dangers and accidents of the seas, rivers, and navigation, of what nature and kind soever during the said voyage, being always excepted. Penalty for non-performance of this agreement £ . . . .

Then follow the signatures of the parties and the attestation of one or more witnesses.

The " running days," or " lay days " as they are more generally called, mentioned in the charter party, are the days allowed for loading and unloading the goods carried in the ship. If this stipulated time should be exceeded the charterer has to pay a sum known as " demurrage " for every day in excess.

The above example of a charter party does not cover all possible stipulations that may be included. There may be many others. For instance, the sections relating to limitation of liability may be extended to contain many other matters than those mentioned above. It is important in this connection to note that the clause states " dangers and accidents *of* the seas." This means any peril occasioned without the negligence of the shipowner by happenings that could not have been foreseen, i.e., of an unexpected nature.

Thus, in *Hamilton* v. *Pandorf* (1887), injury was caused to a cargo of rice on a ship by rats having gnawed a hole in a pipe, whereby sea water damaged the rice without neglect of the shipowner or his servants. It was held that the damage was within the exception and the shipowner was not liable. But had there been direct injury to the cargo by rats, that would not have been an excepted peril.

The phrase " Charterer's liability under this charter party to cease on the cargo being loaded " is termed the *cesser clause*, as under it the intention is that the shipowner, having a lien on the cargo when loaded for freight and demurrage, there is no need to continue the charterer's liability beyond that time. But whether or not he will still remain liable will depend on all the circumstances, e.g., in *Schmaltz* v. *Avery* (1851), Patteson J.

said, "There is nothing in the argument that the plaintiff's responsibility is expressly made to cease 'as soon as the cargo is shipped,' for that limitation plainly applies only to his character as agent, and, being real principal, his responsibility would unquestionably continue after the cargo was shipped." But in *Oglesby* v. *Yglesias* (1858) it was held that the agent, though personally liable on the charter, was freed by such a clause from all liability after shipping of cargo, and this seems the better decision to follow.

Conditions and Warranties.—The various stipulations in the charter party may be either conditions or warranties, according to circumstances. In a charter party, the non-fulfilment of a condition entitles the charterer to repudiate the contract, whereas in the case of a warranty it would only entitle him to sue for damages and not to repudiate the contract. The phrase in the charter party that the ship is "Now at . . . . " is usually regarded as a condition precedent, as it is a very important statement in inducing the charterer to enter into the contract. Most of the other statements are warranties.

Implied Warranties.—Apart from express warranties there are some which are implied, in the absence of any expression. These implied warranties are—

(1) *Seaworthiness and fitness to receive cargo.* The implication is that the ship is fit to undertake the particular voyage contemplated and to encounter the ordinary perils of navigation. The implied warranty ceases as to seaworthiness at the time of sailing, and as to fitness at the time of loading. There is no warranty that the ship will remain seaworthy or fit during the voyage, but should a ship prove unseaworthy very shortly after sailing it will be necessary, as in *Ajum Goolam Hossen & Co.* v. *Union Marine Insurance Co.* (1901), for the shipowner to show that the unseaworthiness resulted from causes arising after the voyage had commenced.

(2) *That the voyage will be commenced and completed within a reasonable time.* In *Dunn* v. *Bucknall Bros.* (1902), the shipowner allowed goods destined for an alien enemy to be loaded on his ship, and, as a result, the ship was seized and detained by the naval authorities. The plaintiff brought an action for damage caused by the delay in delivering his goods, which were being carried on the ship, and it was held that the shipowner was liable.

(3) *That there shall not be unnecessary deviation.* Deviation is any departure from the usual course of navigation, by reason of which the ship may be exposed to more than

usual risk. But certain circumstances may justify deviation, and the Marine Insurance Act, 1906, lays down that deviation or delay in prosecuting the voyage is excused—

(*a*) Where authorised by any special term in the policy;
(*b*) Where caused by circumstances beyond the control of the master and his employer;
(*c*) Where reasonably necessary in order to comply with an express or implied warranty;
(*d*) Where reasonably necessary for the safety of the ship or subject-matter;
(*e*) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger;
(*f*) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship;
(*g*) Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.

Obviously, where the cause excusing the deviation ceases to operate, the ship must resume her course with reasonable despatch. Barratry is defined by the Act as "every wrongful act wilfully committed by the master or crew to the prejudice of the owner or the charterer." Examples would be setting fire to the ship, scuttling the ship, or using it for the purpose of smuggling.

Bill of Lading.

Very often, instead of chartering the whole or part of a ship, the person who wishes to send goods by sea makes an agreement with the shipowner to carry his goods, without hiring any particular part of the ship. Such an agreement is termed a "bill of lading," which is both a receipt for the goods to which it relates and a contract for the carriage and delivery of those goods upon the terms and conditions therein stated. Although it constitutes a receipt for the goods, a bill of lading is not a Bill of Sale within the meaning of the Bills of Sale Acts, 1878 and 1882.

A bill of lading is generally used even where the ship has been let out to a charterer, but where he ships his own goods the bill of lading need usually only be a receipt by the master for the goods shipped. If, however, the charterer carries goods belonging to other persons, then it contains the terms and conditions referred to above.

When the goods are first shipped, a more informal document termed a "mate's receipt" is given, and this is afterwards

exchanged for the formal bill of lading signed by the master of the ship. The master signs as agent of the owner of the ship, except that where the whole of the ship has been chartered he may be the agent of the charterer. The bill of lading need not necessarily name a special consignee, and it may be made out in blank, in which case the right to receive the goods remains in the consignor. Where a consignee is named, he is the person entitled to possession. It requires a sixpenny stamp, which must be impressed before execution for goods exported or shipped coastwise.

Form of Bill of Lading.—As in the case of charter parties, Bills of Lading vary according to the practice of the parties thereto, but the following is very usual—

> Shipped in good order and condition by . . . . . in and upon the good ship called . . . . . whereof . . . . . is master for the present voyage, and now in the port of . . . . . and bound for . . . . . with liberty to call at any ports on the way for coaling or other necessary purposes, [*Three Hundred Casks of Wine*] being marked and numbered as in the margin, and to be delivered in the like good order and condition at the aforesaid port of . . . . . , the act of God, the King's enemies, fire, machinery, boilers, steam, barratry of the master and crew, and all and every other dangers and accident of the seas, rivers, and navigation of whatever kind or nature soever excepted, unto . . . . . or to his assigns, he or they paying freight for the said goods £ . . . . per ton of twenty cwts. net delivered with *primage and average* accustomed. In witness whereof, the master of the said ship hath affirmed to . . . . . bills of lading all of this tenor and date, one of which bills being accomplished the others to stand void.
>
> Dated etc.
>
> Weight value and contents unknown.

The " primage and average " referred to are small payments customarily made by the master of the ship for such matters as lights, pilotage, etc. Average here must not be confused with Average used in a totally different sense, as to which see Chapter 7 on Shipping.

Liability of Master or Owner.—The words " in good order and condition " imply what is termed a *clean* bill of lading. The words " weight value and contents unknown " are inserted for the purpose of protecting the master, as where a *clean* bill has been given it is evidence against him that the goods were, in fact, put on board in good order and condition, and he must deliver them accordingly, even should the statement be untrue. By Section 3 of the Bills of Lading Act, 1855, " every bill of lading in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding

that such goods or some part thereof may not have been so shipped."

But he will not be liable if—

(*a*) The holder of the bill at the time of receiving it is aware that the goods have not been actually shipped, or

(*b*) The misrepresentation in the bill was caused by the fraud of the shipper, the holder, or of some person under whom the holder claims. The bill of lading must state that the goods are actually "shipped." Such words as "received for shipment" are not sufficient. *Diamond Alkali Corporation* v. *Bourgeois* (1921).

The master is bound to deliver the goods to the consignee upon payment of the freight or, of course, if the bill has been assigned, to the holder of the bill. Where, as is usually the case, the bill of lading is drawn in triplicate, this is termed "drawing in a set," and one copy is retained by the consignor, one by the master, and the third is sent to the consignee. In such a case the *first* transferee for value is entitled to the goods; but the master is not liable if he delivers the goods to any person who presents any of the parts of the bill, providing he acted *bonâ fide* and without notice of conflicting claims. If he has notice of a dispute it is his duty to interplead, that is, to express his readiness to deliver the goods to whichever of the disputants is decided to be the rightful owner of them, such decision being arrived at by the disputants settling the matter between themselves.

The duty of the shipowner is to carry the goods safely, subject to the exceptions agreed, and the shipowner is bound by the signature of the master to any bill of lading which contains any terms within his express or implied authority. But the master has no authority to sign a bill of lading for goods not actually received on board, and the owner is not, therefore, liable if he does so.

The shipowner has a lien on the goods carried until he has received payment of the freight, but such lien ends on delivery of the goods. Under the Merchant Shipping Act, 1894, the shipowner may still retain the lien on parting with possession of the goods on giving written notice to the custodian that he retains his lien for freight, and he has a power of sale after ninety days, or earlier if the goods are perishable. The shipowner also has a lien for General Average. (*z*)

Transfer.—A Bill of Lading is an assignable document of title to the goods, but it is not a negotiable instrument, as it cannot confer a better title than the indorser possesses. It may

(*z*) See *ante*, p. 188.

be transferred by indorsement and delivery by the person entitled to the goods named in the bill of lading, and the property in the goods may thus pass; and such an indorsement taken *bona fide* and for value without notice will deprive the vendor of his right of *stoppage in transitu*.

Where goods are delivered to the master of a ship chartered by the buyer, it will be a matter for decision on the particular facts as to whether they come into possession of the master as agent for the buyer or as carrier. But where they are delivered to the master of a ship belonging to the buyer, unless the bill of lading contradicts this idea, the transitus ends and no further right of stoppage exists.

The Bills of Lading Act, 1855, provides that "every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself."

Dock Warrants and Delivery Orders.—There are two other documents found in connection with contracts of affreightment, they are Dock Warrants and Delivery Orders. A Dock Warrant is a warrant issued by a dock company authorizing the person named therein to take possession of goods. A Delivery Order is an order by the owner of goods authorizing the person in whose charge they are to deliver them to the person named in the order. All the above-mentioned documents, Bills of Lading, Mate's Receipt, Dock Warrant and Delivery Order are documents of title as they convey a more or less good title to the goods to which they refer and they fall under the definition of documents of title found in the Factors Act. But only the last two are negotiable instruments, being recognized as such by the custom of merchants.

Freight.—The price paid to the shipowner for the carriage of the goods is not usually payable until the voyage has been completed and the goods delivered, except where the non-delivery is caused by the fault of the consignor or by the perils expressly excepted by the contract of affreightment.

Advance Freight.—If so stipulated, freight is payable before the delivery of the cargo and in any event, in which case it is known as "Advance Freight."

Dead Freight.—Where a charterer fails to load a full cargo, as agreed, he is liable for damages. This is termed "Dead Freight."

Lump sum Freight.—Where an entire sum is to be paid for the hire of the ship for a definite service, if the whole of the goods should be lost no freight will be payable; but, if any part is delivered and delivery of the residue is excused by the excepted perils, the lump sum is payable.

Freight pro rata.—"If the original contract has not been performed, no claim can arise under it; but, if there is a voluntary acceptance of the goods at a point short of their destination, in such a mode as to raise a fair inference that the further carriage was intentionally dispensed with, a new contract will be implied to pay compensation commensurate with the benefit actually received; that is to say, to pay freight for that portion of the voyage which has actually been performed." (*a*)

There are varying forms of contract for the sale of goods to be carried by sea, e.g., C.I.F., F.O.B., F.O.R., F.A.S., etc. In a C.I.F. contract the price includes "cost, insurance and freight," so that the purchaser requires to have delivered to him before he pays for the goods the Bills of Ladings and Insurance documents. In a *F.O.B.* contract ("free on board") the goods are delivered on board free of expense to the purchaser, and they are not at his risk until actually delivered on board; similarly, *F.O.R.* means "free on rail." A *F.A.S.* contract means "free alongside ship," that is, they are delivered alongside the ship free of expense to the purchaser; after that the charges incurred are to be met by him. In a bill of lading the statement often occurs "freight and all other conditions as per charter party," in which case the terms of the charter party bind the purchase to the extent to which he is concerned as to the payment of freight and all other conditions so far as not in conflict with any express stipulation contained in the bill of lading.

(*a*) MAUDE and POLLOCK on *Shipping*, 4th edn., p. 368.

CHAPTER 10

SURETYSHIP AND GUARANTEE

Nature and Formation of the Contract.

The contract of suretyship or guarantee is an engagement to be answerable for another person, either for his debt or that he will perform some act. A guarantee may be given for the carrying out of practically any act, and it does not apply exclusively to mercantile matters. The more usual forms, however, are those connected with commercial transactions and are such as to secure the fidelity of an employee. The other person must, as a rule, be under a legal obligation to pay the debt or perform the act, and the undertaking of the surety or guarantor is only collateral.

There would be an exception to the rule that the other person must be under a *legal* obligation to pay, however, in the case of a person guaranteeing the debt of an infant, for where a person purports to become surety for one who is under disability, it does not prevent the "surety" from becoming liable to the creditor providing there is absence of fraud or misrepresentation. In such case as this, it is *not* necessary that the promise to pay should be in writing, because, being a promise to pay whether the other person becomes liable or not, it is not, strictly speaking, a promise to answer for the default of another. If the infant has been supplied with "necessaries," however, it is probable that the ordinary rule would apply.

In other cases, that is, of persons not under disability, Section 4 of the Statute of Frauds will apply. (*b*) This enacts that no action can be brought to charge a person upon any special promise to answer for the debt, default or miscarriage of another person, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing signed by the party to be charged or his agent. In other words, it is one of those contracts which are unenforceable unless evidenced by writing, that is to say, a verbal guarantee cannot be sued upon. What

(*b*) See *ante*, p. 16.

is a sufficient memorandum to satisfy the statute has already been considered, (*c*) but it should be noted that, by the Mercantile Law Amendment Act, 1856, a guarantee is valid without the consideration appearing on its face, although, of course, the consideration must exist unless the written instrument is under seal, and the memorandum must be complete in every other respect.

Where there is a promise to pay the debt of another, and such promise is only incidental to a larger transaction, the agreement does not fall within the statute; for example, *A* buys goods subject to a lien, and, upon a verbal promise to pay off the incumbrance, he obtains delivery of the goods from *B*. The promise is valid although not in writing. Similarly, in the case where the object is to free goods from incumbrance and not merely to pay the debt of another, and in the case of the employment of a *del credere* agent, no writing is required.

Guarantees and Indemnities.

It was decided in the leading case of *Birkmyr* v. *Darnell* (1704), that a promise to answer for the debt, default or miscarriage of another, *for which that other person remains liable*, is within the statute and must, therefore, be in writing; but, if that other person does not remain primarily liable, it is an indemnity and not a guarantee, and need not be in writing. So that if *A* and *B* go into a shop and *A* says to the shopkeeper "Supply *B* with a hat and if he does not pay for it I will," *B* remains liable to pay, and *A's* promise is collateral to *B's* liability and the agreement is, therefore, within the statute. If, however, *A* had said, "Supply a hat to *B* and I will be answerable," *B* is not necessarily liable to pay, for *A* may have meant that he would pay in any event. It is often difficult to decide as to the real intention. It is always a question of fact, to be governed by the circumstances; but if *A* had intended that he would pay in any event, i.e., he entered into a contract of indemnity, then the agreement need not be in writing. Thus, in *Sutton* v. *Grey* (1894), the plaintiffs, *A. B. & Co.*, a firm of stockbrokers, agreed orally with *D* that they would transact business on the Stock Exchange and be answerable for any customers *D* might introduce, and it was agreed further that *D* should receive half the commission and be liable for half of any losses incurred thereby. Plaintiffs incurred a loss by the default of a customer introduced by *D* and they sought to recover half of it from *D*. It was held that the promise was the ulterior consequence only of the above agreement, the main object of which was to regulate the terms of employment, and the contract being therefore one of indem-

(*c*) See *ante*, pp. 17–19.

nity, the Statute of Frauds did not apply. Similarly, in *Guild* v. *Conrad* (1894), *A* had orally promised *B* that if *B* would accept certain bills for a firm in which *A's* son was a partner, he, *A*, would provide the funds to meet the bills. It was held that *A* was liable, as the promise was to indemnify *B* against the liability incurred in accepting the bills and was independent of the question whether the firm which was primarily liable made default or not. A careful comparison should be made with the facts in the case of *Harburg Indiarubber Comb Co.* v. *Marten* (1902); *C*, who was a director and shareholder in a company, orally promised certain judgment creditors that he would indorse bills for the amount of the debt due by the company. It was held that the promise was not of indemnity, but a promise to answer for the debt of another, i.e., a guarantee, within Section 4 of the Statute of Frauds, and the fact that *C* had an interest as shareholder in freeing the goods from threatened execution, he having no legal interest in or charge upon the goods, did not take the case outside the section; therefore, that as the promise was not in writing, plaintiff could not recover.

The contract of guarantee necessarily involves that there should be also another contract, one party, i.e., the creditor, being common to both contracts. Therefore, the contract of guarantee is not really such where the contract is not made with the creditor. Further, the guarantor or surety must not be in any way liable except to the extent that liability arises from his express promise.

There are, therefore, three parties required to a guarantee—debtor, creditor and surety; whereas a contract of indemnity needs only two, promisor and promisee. A guarantee must be in writing, while an indemnity may be oral.

Offer and acceptance is necessary in the case of a guarantee as in other branches of the law of contract. A guarantee is not binding on the guarantor unless his offer to be surety has been accepted by the person to whom offered. On the other hand, if the other party requested the guarantor to be surety, then the latter's letter acceding to the request is sufficient to bind him.

LIABILITY OF THE SURETY

The contract itself determines the amount of the surety's liability. This amount may be a specified sum payable as liquidated damages, or it may depend on the circumstances of the principal contract to which the guarantee is collateral; but in any case it cannot exceed that for which he has undertaken to be answerable. If the debtor is liable to pay interest after date of non-payment, then the surety is liable for that also. The

liability of the surety in other respects, too, will depend upon the contract he has entered into; and such contract will, as a rule, specify the conditions under which he may be sued on default of the principal debtor. In the absence of any other agreement, the surety may be sued immediately default is made by the principal debtor, even without the principal debtor first being sued or any notice being given to or demand being made upon the surety. Further, if the surety has guaranteed to be liable jointly with others he can, in the absence of contrary provision, be sued for the whole amount undertaken to be paid by the joint guarantors. He can proceed against his co-sureties for what it may be worth, but he must himself first pay the principal debt. A surety remains liable even though he has been adjudged bankrupt, and the creditor could prove against his estate.

If it is sought to make a surety liable, a judgment against the principal debtor is not judgment against the surety; it is not evidence against him, and he is not bound by any admissions made by the debtor. Entirely fresh proceedings must be instituted against the surety, who is permitted to raise any defence which was not raised at the hearing of the action against the principal debtor.

Continuing Guarantee.—It is sometimes a difficult matter to decide whether the guarantee is intended to be confined to a single transaction or whether it is a "continuing guarantee," that is, one covering transactions over an extended period until expressly revoked. Such a question cannot be settled by reference to decided cases, for they are not clearly distinguishable. Each case must, therefore, be decided by the words of the instrument and the presumed intention of the parties. For example, in *Allnutt* v. *Ashenden* (1843), *A* owed *B* a certain account for wines which amounted to less than £100. *C* gave a guarantee to the effect: "I hereby guarantee *A's* account with *B* for wines to the amount of £100." This was held to be a guarantee of the existing account only. Again, where an Insurance Company gives a Fidelity Guarantee during the continuance of employment by a firm of an employee, e.g., a cashier, this is a continuing guarantee of a clearly distinguishable character. On the other hand, in *Wood* v. *Priestner* (1867), *D* owed money to *E* for coals and wished to buy some more. His father, therefore, gave a guarantee to the effect: "I hereby hold myself responsible as a guarantee to *E* in consideration of the credit given to my son for coal supplied, for the sum of £100 and in default of my son's payment of any account due, I bind myself to pay *E* whatever may be owing to an amount not exceeding £100." This was held to be a continuing guarantee.

It is provided by Section 18 of the Partnership Act, 1890, that if a person gives a continuing guarantee to a firm, or to a third person for a firm it is, unless otherwise expressly or impliedly agreed, revoked as to future transaction by any change in the firm. It should be noted, too, that one partner cannot bind the firm by undertaking to act as surety unless he is authorized to do so on its behalf.

RIGHTS OF THE SURETY

The surety is entitled to be made acquainted with all material facts to enable him to decide whether or not he will enter into the contract, and there must be neither fraudulent concealment nor wilful misrepresentation ; yet, by the decision in *Seaton* v. *Burnand* (1900), there is no duty to make disclosures as in the class of contracts *uberrimæ fidei*. But it was held, in the case of *National Provincial Bank of England* v. *Glenusk* (1913), that the rule as to non-disclosure does not apply to a bank guarantee. Equally the creditor, in the case of a continuing guarantee, must not conceal any facts subsequently transpiring by reason of which the surety might avoid the contract.

The surety is a " favoured debtor " in that his liability must be strictly proved, and the mere fact that the principal debtor has become liable is not in itself sufficient to establish the surety's liability. He may be freed from all liability by the negligence of the creditor, or by any alteration of terms of the guarantee or of his liability without his assent. Similarly, when called upon to pay, he may exercise any right of set-off that he may have.

Rights of Surety on paying debt.—When the surety has been obliged to pay the debt, he has the following rights—

Against the Debtor. He may recover from the debtor all money properly paid when due on account of the guarantee, together with interest thereon ; and, if he has reasonably incurred any costs in disputing the creditor's claim, he may recover these also. In addition, he has the right, before payment, if the debt is due, to compel the principal debtor to relieve him from liability

Against the Creditor. On paying the debt of the principal debtor the doctrine of Subrogation enters in and the surety is entitled, under the provisions of the Mercantile Law Amendment Act, 1856 (already referred to), to have assigned to him, or a trustee for him, every judgment or other security held by the creditor, notwithstanding that at law such may be deemed satisfied by his payment or performance, and he is entitled to stand in the place of the creditor, and if

necessary to use the name of the creditor in any proceedings. But if he is a co-surety, although he may exercise his rights against the debtor or co-sureties equally, he cannot compel his co-sureties to pay more than the proportion which as between themselves they are justly liable to pay. The right exists even though at the time of entering into the contract the surety did not know of the existence of such securities.

If the creditor has any priority, that too passes to the surety. For example, it was held in *In re Lord Churchill* (1888) that a surety who has paid a debt due to the Crown is entitled to the Crown's priority over other creditors.

Against Co-sureties. If he has paid the whole amount under the guarantee, he is entitled to contribution from his co-sureties. All sureties must contribute equally, if bound for equal amounts, whether by the same or different instruments. But if not liable for equal amounts they must contribute in proportion to the amount for which each is liable. It was held in *Ellesmere Brewery Co.* v. *Cooper* (1896) that any sureties unable to pay are not counted as sureties for the purpose of assessing the contribution, herein differing from the rule that the surety remains liable even though bankrupt. A surety who has paid money under the guarantee cannot recover from his co-sureties until he has paid more than his just proportion of the debt. Thus, if *A* and *B* are co-sureties with liability under the contract of guarantee limited to £1,000, and on the principal debtor defaulting *A* pays the sum of £550, the amount demanded by the creditor, which was half the amount due, he would not be able to recover a contribution from *B* of £275, although of course it would be otherwise had the £550 been the whole amount due under the bond. It was held in *Steel* v. *Dixon* (1881) that a co-surety is entitled to call upon any of the other co-sureties for a share of any securities which they may have obtained, and that such securities must be brought into " hotchpot," i.e., be pooled, in order to divide the loss equally among the co-sureties.

DISCHARGE OF THE SURETY

Any grounds sufficient to render void or discharge an ordinary contract, is sufficient to terminate a contract of guarantee. These grounds are :

By agreement;
By performance;
By breach;

By impossibility;

By operation of law.

They have already been discussed under the heading of CONTRACTS—see Chapter 1.

In addition, the following acts, in the absence of special agreement, operate as a discharge of the surety. These rules are the result of a variety of legal decisions, to most of which it is unnecessary to refer in detail—

Innocent non-disclosure of a material fact, e.g., previous dishonesty of a servant, in the case of a guarantee for the fidelity of the servant.

Fraud or misrepresentation in inducing the surety to agree to undertake the liability.

Non-execution of guarantee. If an intended co-surety does not execute the guarantee.

Failure of the consideration, that is, where the obligation is never incurred by the proposed debtor.

Death of the surety does not act automatically as revocation of a continuing guarantee; but, if notice of the death be given to the holder of the guarantee, the surety's estate will not be liable for any future advances. But if the consideration has been given once for all, as, for example, for admission as an underwriter at Lloyd's, death does not release the surety's estate from future liability. On a joint and several continuing guarantee the co-sureties are not released by the death of one surety.

The absolute discharge of the principal discharges the surety. But under the Bankruptcy Act, 1914, the discharge in bankruptcy of the debtor or the acceptance of an arrangement by his creditors do not operate to discharge the surety. (*d*)

If the debtor and creditor enter into a covenant that the latter will not sue the former, as usually he is entitled to do, and if there is a reservation as regards the surety, e.g., that he shall not be released, then the surety is not released.

Any material alteration in the terms of the contract between the creditor and the debtor without the consent of the surety. The law on this was expounded by COTTON L.J. in *Holme* v. *Brunskill* (1878) as follows:—"The true rule, in my opinion, is that if there is any agreement between the principals with reference to the contract guaranteed, the surety ought to be consulted, and that if he has not consented to the alteration, he is discharged although in cases where it is without inquiry evident that the alteration

(*d*) See *post*, p. 323.

is unsubstantial, or that it cannot be otherwise than beneficial to the surety, the surety may not be discharged ; yet, that if it is not self-evident that the alteration is unsubstantial, or one which cannot be prejudicial to the surety, the court will not, in an action against the surety, go into an inquiry as to the effect of the alteration."

Alteration of the instrument of guarantee by an intended co-surety. The effect of this rule may be illustrated by the case of *Ellesmere Brewery Co.* v. *Cooper*, cited above, where four persons executed a joint and several contract of guarantee, whereby the liability of two of the sureties was limited to £25 each, and of the other two to £50 each. One of the latter sureties, who was the last to execute it, added to his signature the words " £25 only " and handed the instrument to the creditor, who made no objection. The principal debtor defaulted and on an action by the creditor to recover from the sureties it was held that the terms of the contract had been materially altered and that, therefore, the first three sureties were discharged from any liability thereunder.

A binding agreement between the creditor and debtor to give time to the principal debtor discharges the surety. But the surety is not released by such an agreement if the creditor expressly reserves his rights against the surety. And a mere voluntary giving of time will not discharge the surety. Moreover, if the creditor has obtained judgment against the principal debtor and the surety, even a binding agreement to give time to the principal debtor does not release the surety, for he is a surety no longer but bound by the new liability, viz., the judgment.

Merger. If the creditor accepts from the debtor a new security in lieu of the original security and of such kind as to operate by way of merger of the old security.

Connivance. If the creditor connives at the default of the principal debtor.

The *laches*, i.e., undue delay, of the creditor ; if the creditor fails to take proceedings against the surety within the time fixed by the Statute of Limitations. But a mere forbearance for a short time will not discharge the surety.

Fidelity Guarantees. In fidelity guarantees, unless otherwise agreed, the surety is discharged on the duties of the office, or appointment of the person guaranteed, suffering material alteration. Further, if the employer discovers an act of dishonesty of the employee guaranteed he must inform the surety of the fact and the surety is then entitled to terminate the guarantee.

Revocation by the surety. If the guarantee is a continuing guarantee and the consideration is divisible it may, as regards future transactions, be revoked by due notice. But where the consideration has been given once for all it cannot be so revoked.

Partnerships. Under the provisions of the Partnership Act, 1890, in the absence of a contrary agreement, a continuing guarantee given to a firm or for a firm is revoked as to future transactions by any change in the constitution of the firm.

Representation concerning the Credit of another.

As has already been stated, guarantees are required by the Statute of Frauds to be in writing. But apart from this, where a person makes a false representation in order to enable another person to procure credit, and as a result of such *fraudulent* representation a third party does give credit, such person is liable to an action for fraud provided that, in accordance with Lord Tenterden's Act, such representation is in writing and signed by the person making it. (*e*)

Prior to the passing of Lord Tenterden's Act, the Statute of Frauds was often evaded by suing in an action for deceit on an alleged oral representation where no guarantee had been given in writing. For instance, *A* wishes to obtain goods on credit and he arranges with *B* to act as a reference and gives his name as such to the shopkeeper. *B* on enquiry by the shopkeeper, knowing otherwise, states that *A* is solvent and a safe man to deal with. *B* is not bound as a surety, and unless his representation is in writing he cannot be amenable in an action for fraud, owing to Lord Tenterden's Act. If he replied to the enquiry by letter he is liable.

(*e*) See *ante*, p. 20.

CHAPTER 11

STOCK EXCHANGE LAW AND PRACTICE

An exchange is a market. In Liverpool and Manchester there are important Cotton Exchanges, where business is done in raw cotton ; in these places also there are Stock Exchanges, where business in connection with the buying and selling of securities, stocks, shares, etc., is carried on. But in speaking of the " Stock Exchange," the London institution bearing that name is invariably referred to.

The management of the London Stock Exchange is in the hands of a committee, and members must abide by the rules made by the committee. The membership is restricted and is only from year to year, a fresh election being necessary every year, and a member has no *right* to re-election.

Members of the Stock Exchange are either jobbers or brokers. Brokers are those who, either instead of, or in addition to, buying and selling on their own account, act as agents for clients, who are members of the public. The practice of the Stock Exchange is of a complex nature and is of little practical interest to persons who are not members. But there are certain matters that ought to be borne in mind by commercial people who are likely to have any dealings in securities.

The legal aspect of the rules of the Stock Exchange does not affect the members as between themselves, for one of the rules is that the members are forbidden to take legal proceedings, and all disputes between themselves must be referred either to arbitration or to the committee. As regards the outside public, the ordinary rules of contract apply. It is assumed that the client of the broker knows of the printed rules of the Stock Exchange ; and he is bound by them, even if not aware thereof, if they are legal and reasonable. If he knows of them he is bound even if they are illegal and unreasonable. On the other hand, he is not bound by a custom of the Exchange unless he is aware of it, and the fact that a particular custom is illegal or unreasonable, e.g., the custom to disregard Leeman's Act,

will be *primâ facie* a supposition that he has not agreed to be bound thereby. (*f*)

Whether he was or was not aware of the custom is a matter of fact to be proved in the ordinary way. In *Benjamin* v. *Barnett* (1903) it was held that a client cannot refuse to accept a part only of the securities which he has authorized the broker to purchase on his behalf, whereas in ordinary contracts the purchaser need not accept part only of what he has agreed to purchase. So that a client is still bound by a custom of the exchange, even though it is opposed to the ordinary law of contract.

Gambling and Speculation.

The term " Gambling on the Stock Exchange " is often used popularly. It takes place where there is no intention on the part of the seller to deliver, or of the purchaser to take up, the securities which are the subject matter of the agreement. The matter is settled by the payment or receipt, as the case may be, of the difference between the price at the time of the transaction and the price at the settling day. There are, of course, many instances where " differences " are paid and where the transactions are not gambling ones. Naturally, if the purchaser is able to sell his purchase at a profit before the need arises for taking up the securities he will do so—though his intention may have been to pay for them and take them up if the price had not risen sufficiently to be worth his while to sell during that account. Speculation, as distinct from " gambling," is the purchase of stocks or shares with the intention of holding them until such time as the price has risen to a figure sufficient to warrant a profit on a re-sale. In this case the purchaser intends, if the price has not risen to such a figure before settling day, that he will pay for them.

Bulls and Bears.

Where securities are bought with a view to a rise, the purchaser is termed a " Bull," the intention being to induce a fictitious rise in values. Similarly, where they are sold with a view of buying back later at a lower price, the seller is termed a " Bear," his sales being intended to depress the market price in order to allow of re-purchase at a price sufficient to give him a substantial profit on the transaction. The " Bull " buys stock for forward delivery in the hope that he can sell out at a profit

(*f*) See *ante*, pp. 44 and 80.

without taking up and paying for the stock. Similarly, the " Bear " sells for forward delivery stock that he does not possess, hoping that he will be able to buy back at a lower price without having to deliver the stock.

When the sales of the Bears amount to more than the sales of the Bulls, there is said to be a " Bear account." This condition is a strengthening influence, for it is known that the Bears must eventually buy back in order to close their commitments. When there is a Bear account the market is said to be " oversold " or " short of stock." A " Bull Account " is, of course, the reverse of the above conditions.

Agency of Stockbroker.

As above mentioned, a stockbroker is one who buys and sells on behalf of a principal, and he is therefore an agent and, generally speaking, the ordinary rules of agency apply, except in so far as they may be altered by rules and customs of the Exchange, referred to above. When the broker has made a purchase on behalf of his principal he makes out a Contract Note, i.e., sends a Bought Note to him and a Sold Note to the person on whose behalf he has sold. These notes are the evidence of the contract ; but securities are " choses in action " and not goods, as defined by the Sale of Goods Act, 1893, therefore there is no necessity for the contract to be in writing in order to be valid, but the broker is obliged to make out a Contract Note in order to pay the stamp duty. By the custom of the Exchange the broker is bound to take up and pay for any securities he purchases, whether or not he has received the purchase money from his principal ; but the principal is bound to indemnify him. Subject to the cases of non-payment by the principal, there is no risk in the profession of stockbroking, providing the broker keeps to his proper vocation of buying and selling for clients. The risk which often does arise is when the broker becomes in effect a jobber, by buying and selling on his own account.

If a person has purchased securities he must pay the price at the next " pay day " ; but if he should not wish to do so he can usually arrange a " continuation " or " carry over " to the next account for a charge called " contango," the amount varying according to the state of the market and the value of money. If the market is in such a condition that securities can be purchased more cheaply for the account than for money, that is, if the market is a " bear " market, the purchaser carrying over pays a rate termed " backwardation." Such continuation is regarded as a fresh contract.

Stock Jobber.

The jobber is not an agent. The broker who has been instructed by a client to purchase securities buys them usually from a jobber, who buys and sells on his own account as a rule, but sometimes he finds some one else who sells to the broker. The broker is obliged to pay the jobber, even if his principal should default. Jobbers as a rule, and brokers often, specialize in the different markets, e.g., Rubber, Oil, etc. The profession of a jobber is precarious and attended with risk, for he is not buying on a commission for a principal, and has no principal behind him to indemnify him for moneys he is bound to pay. If a jobber is left with a number of securities on his hands and the price has fallen, he often decides to hold them in the hope of better times. In this case it may happen that he needs money to enable him to carry on ; he therefore deposits the securities with a banker. The banker lends on the securities a proportion of the value varying with the nature of the security and the state of the money market generally. The market on occasions fluctuates so violently, especially during times of political upheaval or industrial disturbance, that the difference in price within a few hours is often sufficient to make the jobber a fortune or to reduce him to insolvency.

Defaulting Members.

Where a member of the Exchange is unable to meet his engagements he is " hammered," that is, he is publicly declared to be a defaulter, and he automatically ceases to be a member of the Stock Exchange. The Exchange has internal rules for dealing with his assets, which are rather complicated and of no practical interest to a non-member.

Settlement.

All contracts on the Stock Exchange are made for settlement on a particular day, varying to a slight extent with the nature of the security in question. In the case of consols there are twelve settling days or " account days " in the year, and in the case of other securities twenty-four. When a purchase is made the intention is to pay and take delivery at the end of the current account. Two days before the account day is the day called " contango day," when the transaction of carrying over, already referred to, is effected (in the case of mining shares the contango day is three days before the account day). The next day is termed " ticket day," when the jobbers and brokers clear their transactions by a complicated procedure now much simplified

by the establishment of a form of Clearing House, and the Account Day or Pay Day is the last day of the account.

The Market.

The prices of most securities fluctuate daily, the amount of variation depending on a variety of causes—the state of the money market, the political atmosphere, the industrial position, the law of supply and demand, and the presence or absence of "Bull" or "Bear" pressure by speculators. There are many kinds of securities. A security is a document giving a right to property not in physical possession of the holder of the document. It is therefore a "chose in action." What are known as "gilt edged" securities are those which have a solid backing, which makes it highly improbable that the capital sum represented will be lost, although of course the value may fluctuate with the market, e.g., Government loans, certain railway stocks and shares, etc. These are usually authorized as trustee securities, that is to say, a trustee, unless otherwise authorized by the terms of the trust, may only invest trust money in such securities or in freehold property. Shares are in relation to certain definite equal parts or shares in an undertaking or property. Stock is not necessarily an aliquot part, but may be divided into any amount, e.g., if shares are £10 each in a company, only £10 shares can be purchased, and each share has a distinctive number; but if these shares were converted into stock, say, £10 15*s.* worth could be purchased, and it is not numbered. Shares are not necessarily fully paid up, but it is essential that stock should be. There are various kinds of stock, viz., Inscribed, that is, written in the books at the Bank of England; Registered, where the transferee's name is entered in the Company's books; Bearer, where the holder for the time being has the title thereto. And certain securities are termed Bonds, i.e., promises to pay a stated sum, issued by various Governments and Corporations, e.g., Treasury, Exchequer, India Bonds.

Transfers.

Transfers of securities are sometimes made in blank, that is, the transferor signs a blank Form of Transfer, leaving the blanks to be filled up later by the broker. The legal effect is that, where the transfer is one that can be effected by writing only, the broker is within his authority in filling in the blanks; but where it is necessary that the transfer should be by deed, then the transferor must again deliver the instrument after the blanks have been filled in. The rules of the Stock Exchange make a broker personally liable if he obtains a transfer of securities by means of

a Forged Transfer. The transfer has, of course, no valid effect as regards the ostensible transfer. The property in securities purchased through a broker does not pass to the purchaser until the actual delivery of the completed transfer. The contract previously is only an agreement to transfer.

Underwriting.

Sometimes stockbrokers, or jobbers, or certain Financial Corporations, underwrite a new issue of shares. That is to say, they agree, usually in consideration of a commission on the whole amount issued to the public for subscription, to take up and pay for any shares that may not be applied for by the public. If all the shares should be applied for by the public, obviously the commission earned is a clear gain to the underwriter ; but where very few shares are applied for, it may happen that he is badly hit by having to pay for and hold for a time a large number of shares.

Options.

If a person is under the impression that certain stocks or shares will shortly rise in price, but he does not wish definitely to purchase, he can deal in the securities by what is termed an " option." That is, he agrees to pay a specified sum to have the right (which he need not exercise unless he wishes) to purchase a stated amount of the securities at an agreed price on or before a certain date. If the price rises he will of course exercise his option to purchase at the lower figure. If the price should remain stationary or fall he will not exercise the option. But in any event he has to pay the amount agreed to be paid for the option. This is termed a " call." Similarly, he may take an option to sell securities instead of buying. If he does this, it is termed a " put." Sometimes the two are amalgamated and he has the choice of either buying or selling, in which case it is termed a " put and call."

Commercial Investments.

As to what consideration should be borne in mind by a company or firm in making investments is a matter which must be governed by the individual circumstances or requirements. If the Articles of a company preclude the Directors from investing the Company's funds in anything but Trustee Securities, then that provision must be complied with. Generally, there is no such restriction placed upon the Directors, in which case considerations of the element of risk and consequently the rate of dividend expected must be factors in arranging an investment.

If the company or firm is incorporated for the purpose of dealing in investments, that is, if it is an Investment Corporation, its business will be much akin to that of the Stock-jobber, but if the company or firm is a trading concern, and surplus assets are available for investment, or if money is required to be invested to satisfy the requirements of some fund, e.g., a Superannuation Fund, or a Sinking Fund, then the utmost prudence is required in selecting not only the particular classes of investments most suitable, but also the individual investments themselves.

In cases where it is not expected that the capital will be required for some years, a long term investment is convenient, say a stock maturing in 20 to 30 years. In such case, the interest or dividend will be fairly stable, and if the stock is purchased at the right price—under par—a profit will be made at maturity on the capital outlay.

If, on the other hand, a short term investment is required, and the question of interest is not important, it would be advisable to seek a stock well below par offering a small interest, and in this case a profit would be made on the capital within a short period.

Generally, the offer of a large dividend or interest entails some risk as to the capital invested, and this applies more particularly to those securities of the industrial group, e.g., oil, rubber, diamond and gold-mining shares, etc.

Frequently, the ultimate yield on the capital invested is an important factor, and in comparing one investment with another this can soon be ascertained. Consideration must be had for (*a*) the capital appreciation at maturity, (*b*) the annual dividend or interest yield, less income tax, and (*c*) the number of years the investment will be current, i.e., before maturity.

CHAPTER 12

PATENTS, TRADE MARKS, AND COPYRIGHT

PATENTS

The prerogative vested in the Crown of granting the monopoly of a trade or manufacture was much abused and was restricted by the Statute of Monopolies, 1623 ; but, by Section 6 of that Act, the right of the Crown to grant Letters Patent for the sole working or making of new manufactures to the true inventor for a period up to fourteen years, was retained. There are several later statutes dealing with Patent Law, but practically the whole of the law relating thereto has been consolidated and amended by the Patents and Designs Act, 1907, as amended by the Patents and Designs Act, 1919.

What can be Patented.

The subject of a valid patent must be—

(1) *A manufacture*, i.e., some article which is tangible. There can be no patent in an abstract principle or a natural law, e.g., an idea cannot be patented ; nor can a discovery in science or surgery.

(2) *Novel*, i.e., new within the United Kingdom. It must not be known to the public, otherwise a patent will not be granted.

(3) *Of some utility*, however small ; but it need not necessarily be commercially successful.

By utility is here meant the advantage of a process by which either a better article at the same price as one previously known can be produced, or by which one as good or not so good can be produced at less cost ; or it may be the virtue of an entirely new article which makes it possible to do something which was not possible before, or to do by entirely new means something which was possible before.

To whom Patent can be granted.

A patent may be granted to any person (including a body corporate) whether or not a British subject, and the person may be granted a patent either alone, or jointly with another person or persons who are not the inventor or inventors, but—

(1) He must be the true and first inventor, or
(2) He must be a person to whom the invention has been communicated from abroad, or
(3) He must be the legal representative of a deceased inventor.

The true and first inventor was construed in the case of *Plimpton* v. *Malcolmson* (1876) to mean not only the person referred to above, but also a person who, being one of two persons who invent the same thing simultaneously, first takes out the patent; and further, it includes a person who invents and takes out a patent for a thing which somebody had invented before but had not patented nor disclosed sufficiently to make it common knowledge.

How to obtain a Patent.

In order to obtain a patent, a form of application, together with a form of statutory declaration, must be obtained from the Patent Office or from certain Post Offices. This form when duly completed by the applicant and impressed with the fee stamp is lodged at the Patent Office, together with a provisional or complete specification describing accurately the nature of the invention. The object of a "provisional" specification is to enable the inventor, who may not yet be in a position to complete his specification, to protect his invention and prevent himself from being forestalled by any other person. On this the stamp duty is £1 only, so that an inventor has a very inexpensive method of protecting himself while he is perfecting his invention or finding out whether or not it is likely to be worth his while to proceed further with it. If a provisional specification is lodged, and the inventor decides to proceed, he must lodge his complete specification, which must conform to the provisional specification, within nine months, which period may on application be extended by three months. An examiner then inquires into the invention generally to see if the specification fairly describes the invention and whether the invention has been patented or filed at any time within the last fifty years.

It is usual, and in some cases almost imperative, for an inventor to employ a Patent Agent for the purpose of taking out his patent. Very few cases are as simple as they appear owing to the technicality of the law relating to patents, and the patent agent not only keeps his client on the right lines but

also draws up the specification and prepares the drawings in the form the Patent Office requires. Only those persons who are registered as such are allowed to act as patent agents, and a person holding himself out as a patent agent without being duly registered under the Act is liable to a heavy fine.

Grounds on which grant may be opposed.—If the examiner's report is favourable, the invention is advertised in the weekly Official Journal and, within two months of publication, any person can oppose the grant of the patent on the grounds—

(1) That the applicant obtained the invention from him or in fraud of him.
(2) That the invention was claimed in a specification filed within the last fifty years.
(3) That the complete specification does not fairly or sufficiently describe the invention.
(4) That the complete specification differs from the provisional one and that the opponent has, in the interval, applied for a patent for the further invention.

The Comptroller of the Patent Office hears the opposing claims, and there is a right of appeal to the Law Officers of the Crown.

If there is no opposition, or no successful opposition, the patent is granted for fourteen years from the date of the application. This period may be extended by the High Court for an additional five or ten years if it appears that the patentee has not been adequately remunerated.

Grounds on which grant may be revoked.—The patent so granted may be revoked on the grounds, *inter alia*—

(1) That the invention was obtained by fraud, or that the invention had been publicly used before the application for the patent was made.
(2) On the expiration of four years of the grant—that it is being exclusively worked outside the United Kingdom.
(3) That the patentee is not working the patent adequately, or is prejudicing any trade or industry. The claimant may ask for the grant of a compulsory licence to work the invention or, in the alternative, revocation.
(4) That there has been abuse of monopoly rights in the circumstances set out in the Act of 1919.

No restrictive provisions may now be imposed on the purchasers of patented articles, as was formerly a common practice.

The Register of Patents.

A register of the proprietors of patents is kept at the Patent Office, and all assignments and licences must be entered thereon.

The patentee may request the Comptroller to indorse the register with the words "licences of right," in which case any person may as of right be entitled to a licence on terms. Notices of mortgages may be entered, but no trust can be entered on the register.

Rights of Patentee.

The patentee is entitled to all rights in and profit arising from his invention during the period for which the patent is granted or any extension thereof. Should another person infringe his patent, the patentee may bring an action for infringement, claiming both damages and an injunction to restraint of further infringement.

The patentee may assign his rights, either absolutely or with limits as to time or space. It is not essential that an assignment should be by deed, but it is necessary that it should be so in order that the assignee may sue in his own name for infringement.

Rights of the Crown.

Where it seems probable that an invention is one likely to prove of value to the Crown, special terms may be imposed upon the inventor when he applies for a patent; and the War Office and Admiralty have the right to acquire, and keep secret, inventions likely to prove useful to the naval and military authorities, on paying to the inventor a sum sanctioned by the Treasury.

Fees.

The following fees are payable by the patentee, viz.—

On filing an application and a provisional specification	£1
On filing a complete specification	£3
On sealing the patent	£1
For renewal beyond four years, for every succeeding year—	
For the 5th year	£5
For the 6th year	£6
And so on to the 14th year . . .	£14

If these payments are not made before the commencement of the year, the patent lapses, but an extension of three months may be granted on payment of certain fees.

Transmission.

On the death of the owner of a patent, the patent is vested in the personal representative of the deceased, a patent being deemed personal property.

TRADE MARKS

The law relating to Trade Marks was consolidated and amended by the Trade Marks Act, 1905 (referred to herein as " the Act "), and the Trade Marks Act, 1919.

A trade mark may be defined as a mark used upon, or in connection with, goods, to indicate that they are the goods of the proprietor of such mark by virtue of manufacture, selection, certification, dealing with or offering for sale. The Act provides that all trade marks shall be registered ; and the right to the exclusive use of the trade mark is obtained only by such registration.

Registration of Trade Marks.

The register is kept at the Patent Office, and an application to the registrar for registration must be accompanied by the prescribed fee, five representations of the mark which it is desired to register, and details of the particular goods or classes of goods in respect of which the mark is to be registered. A registrable trade mark must contain or consist of at least one of the following essential particulars—

(1) The name of a company, individual, or firm represented in a special or particular manner, e.g., impressed, woven or printed.
(2) The signature of the applicant or some predecessor in his business.
(3) An invented word or words.
(4) A word or words having no direct reference to the character or quality of the goods and not being, according to its ordinary signification, a geographical name or a surname.
(5) Any other distinctive mark ; but a name, signature or word, other than such as fall under the four previous heads is not, except by order of the Board of Trade or the Court, deemed a distinctive mark. And no word which is the only practicable name or description of any single chemical element or single chemical compound, as distinguished from a mixture may, as a rule, be registered as a trade mark.
(6) An " old mark," that is, a mark existing and continuously used before 13th August, 1875.

In re Powell's Trade Mark (1894) where the words " Yorkshire Relish " alone had been used only on packing cases containing bottles of sauce, prior to 1875, and the bottles themselves had been marked with another trade mark, it was held that the

user of the words " Yorkshire Relish " upon the packing cases had not constituted user as a trade mark prior to 1875.

There are certain forms of wording which cannot be registered as a trade mark, e.g., " Patent," " Registered Design " and certain emblems, e.g., representations of any member of the Royal Family, and, unless registered before 1875, British National Flags, the word " Royal," the Royal Arms or crests or anything resembling them. Further, such generic terms as " Brussels " carpet, " Nottingham " lace or " Cheshire " cheese cannot be used as trade marks, as they are distinctive of a wider origin than is contemplated in the use of a trade mark, which indicates the narrower origin of one manufacturer or body.

Certain persons may be appointed and may use in their trade the Royal Arms, but any one using them without authority is liable to a fine of £5.

After the application has been accepted it is advertised by the registrar and, within two months of such advertisement, any person may give notice of opposition to the registration of the mark on the ground that it resembles an existing trade mark or is not sufficiently distinctive. The opposition claim is heard by the registrar, but there is a right of appeal to the Board of Trade or the Chancery Division. The registrar must not register anything which is calculated to deceive or which is contrary to law or morality, or which would be a scandalous design.

Where a word trade mark is registered which is the name or the only practicable name of an article or substance manufactured under any patent in force, or granted after the passing of the Act of 1919, all rights to the exclusive use of such trade mark cease upon the expiration or determination of the patent.

The registration is for fourteen years, and is renewable every fourteen years.

Warranty.

Section 17 of the Act of 1887 provides that " on the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee."

Assignment of Trade Mark.

A trade mark can be assigned, but only in connection with the goodwill of the business with which it is connected.

Infringement of Trade Mark.

Infringement consists either of the unauthorized use of the actual mark or of a mark calculated to deceive and to mislead purchasers into the belief that the goods are those of the proprietor of the registered mark. In cases of infringement of a trade mark, the proprietor has the same remedies as for the infringement of a patent or of a copyright. It was held in *Condy* v. *Taylor* (1887) that where a manufacturer sells articles, usually sold and used in small quantities, in bulk to a dealer without any restriction as to its disposal, he is taken to authorize its sale by the dealer as the manufacture of his vendor and it may be called by the name registered as a trade mark by the manufacturer.

Merchandise Marks Acts.

The Merchandise Marks Act, 1887, provides that any person who forges a trade mark, or falsely applies to goods any mark so nearly resembling a trade mark as to be calculated to deceive, or applies any false trade description to goods, is liable to criminal proceedings and if convicted is punishable by fine or imprisonment, or both, and the goods may be forfeited and destroyed. It was held in *Reddaway* v. *Banham* (1896) that a trader is not entitled to pass off his goods as those of another trader by selling them under a name which is likely to deceive purchasers into believing that they are purchasing goods of that other trader, even though in its primary meaning the name is a true description of the goods.

By the Merchandise Marks Act, 1891, it is provided that the customs entry relating to goods imported is deemed to be a trade description, and powers are conferred on the Board of Trade to undertake prosecutions in the public interest, e.g., where adulterated goods are imported the customs entry is now deemed to be a " trade description " and offenders against this Act are liable to prosecution.

The Merchandise Marks Act, 1911, enacts that where any goods which, if sold, would be liable to forfeiture by the Act of 1887, are imported into the United Kingdom, and they bear any name or trade mark being or appearing to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom, and it appears that the use of the name or trade mark is fraudulent, the specified officer of Customs and Excise may require the importer to produce any documents in his possession relating to the goods, and to supply the name and address of the persons by whom and to whom consigned, and any information so obtained may be furnished by the Commissioners of

Customs to the person whose name or trade mark appears to have been used or infringed. So that where, e.g., if hams were imported from America with the description " *X's* York Hams " which happened to be the name and mark of a well-known English curer of hams, the Customs officers could call on the importer to produce his documents to show who consigned the goods and to whom they were consigned in this country for distribution.

Transmission.

A trade mark is personal property, and the rights therein are vested, on the death of the owner, in his personal representative.

COPYRIGHT

Copyright is now governed by the Copyright Act, 1911, which consolidates all the previously existing common law and legislation on the subject, except the penal sections of a few statutes. But in addition to being a consolidation Act, the Act of 1911 has made many important changes in the law of copyright.

What constitutes Copyright.

Copyright is defined by the Act as " the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever ; to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public ; if the work is unpublished, to publish the work or any substantial part thereof ; and it includes the sole right—

(1) To produce, reproduce, perform, or publish any translation of the work
(2) In the case of a dramatic work, to convert it into a novel or other non-dramatic work
(3) In the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work by way of performance in public or otherwise
(4) In the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered " ;

and it includes the sole right to authorize any such acts as aforesaid. But it does not apply to copyright in designs capable of being registered under the Patents and Designs Act, 1907, (*g*) except where such designs are not used or intended to be used as models or patterns to be multiplied by any industrial process. Copyright does not exist in seditious, defamatory or immoral works, and it was held in *Southey* v. *Sherwood* (1817) that, where

(*g*) See *ante*, p. 241.

the work is of such a nature that an action could not be maintained on it for damages, the court will not interfere by injunction.

Rights under the Act of 1911.

Rights existing at the commencement of the Act, viz., 1st July, 1912, are terminated and, instead, the person entitled thereto acquired copyright under the Act of 1911.

It is provided that copyright shall subsist, throughout those parts of His Majesty's dominions to which the Act extends, in every original literary, dramatic, musical, and artistic work, if—

(1) In the case of a published work, it was first published within such parts of the dominions aforesaid, and

(2) In the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within those parts of such dominions;

but in no other works, except so far as extended by Orders in Council to self-governing dominions to which the Act does not extend, and to foreign countries.

Publication.

Formerly it was necessary to register a work at Stationers' Hall in order technically to publish the work, so that an action for infringement might be maintained. But now no formality is required, and even the name and address of the owner of the copyright need not necessarily be included on any printed matter. Publication of a work means the issue of copies to the public; but does not include the performance in public of a dramatic or musical work, public delivery of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art; and the issue of photographs and engravings of works of sculpture and architectural works of art is not deemed publication of such works. Except for purposes of infringement, a work is not deemed to be published or performed in public, or a lecture delivered in public, if this is done without the consent of the author or his representatives. A copy of every book published in the United Kingdom must be sent within one month of publication to the British Museum Library and, in some cases, within a year, to certain University Libraries. If a publisher fails to deliver the copy under the Act he is liable to a fine of five pounds and the value of the book.

Infringement of Copyright.

Copyright is deemed to be infringed by doing, without the consent of the owner, anything the sole right to do which is

conferred by the Act on such owner. It is also an infringement for a person—

(1) To sell or let for hire, or, by way of trade, to expose or offer for sale or hire, or
(2) To distribute for the purposes of trade or to such an extent as prejudicially affects the owner of the copyright, or
(3) By way of trade to exhibit in public, or
(4) To import for sale or hire into any place to which the Act extends—

any work which he knows to be an infringement of copyright.

Acts which do not constitute infringement.—There are, however, many exceptions as to what is deemed an infringement, and the following acts do not constitute an infringement—

(1) Any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper summary:
(2) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work:
(3) The making or publishing of paintings, drawings, engravings or photographs of a work of sculpture or artistic craftmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art:
(4) The publication in a collection, mainly composed of non-copyright matter, *bonâ fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works which are not themselves published for the use of schools and in which copyright subsists: Provided that not more than two such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged:
(5) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given,

and except whilst the building is being used for public worship, in a position near the lecturer, but nothing in this paragraph shall affect the provisions mentioned above as to newspaper summaries:

(6) The reading or recitation in public by one person of any reasonable extract from any published work.

Except, therefore, in very straightforward cases, it is often difficult to say definitely what is or is not an infringement of copyright. It was held in *Scott* v. *Stamford* (1867) that the absence of any dishonest intention does not excuse the appropriation where, even with full acknowledgment of the original, the result is to injure and supersede the sale of the original work. Thus, a work may be infringed where passages are taken from it and stated to be quotations, even where they are not so extensive as to be a substitute for the original work. In *Warne* v. *Seebohm* (1888) the defendant had dramatized and represented on the stage a popular novel called *Little Lord Fauntleroy*, and as an infringement it was alleged that he had caused four copies of the play to be made. It was found that very considerable passages in the play had been taken verbatim from the novel, and an injunction was granted to the plaintiff, the owner of the copyright in the novel. But it was held in *Dodsley* v. *Kinnersley* (1761) that if an abstract is published in an annual register or a magazine it is not piracy, and in particular where the author has himself published extracts in a periodical paper. And in *Leslie* v. *Young* (1894) it was held that a claim to copyright does not arise by the mere publication in a particular order of time-tables found in various railway companies' publications.

There are several remedies for infringement open to the owner of the copyright infringed. The civil remedies are an action for an injunction, and for damages or an account of net profits. He may also claim the delivery up to him of all infringing copies and plates. Any action for infringement must be commenced within three years next after the infringement. In addition, the owner of the copyright may proceed summarily before justices of the peace, and the offender may be fined up to £50 or sent to prison for a term up to two months. It is not possible here to consider the matter of remedies in detail, but the Act deals at length with the whole question and, in particular, as to pirated copies of musical works and cognate matters.

Importation into the United Kingdom of copies of any work which if made in the United Kingdom would be an infringement of copyright, may be prevented by the owner of the copyright by giving notice to the Commissioners of Customs and Excise; and the Commissioners have power to prevent such importation.

Duration of Copyright.

Copyright usually exists for the life of the author and for fifty years after his death ; but copyright in phonographic records, photographic plates and similar things is for fifty years from the making of the original plate. After the death of the author the copyright vests in his personal representative. At the end of twenty years (or thirty years in the case of copyright existing at the time of commencement of the Act) from the death of the author of a published work, such work may be reproduced for sale if the person who publishes it gives notice in writing to the then owner of the copyright and pays to him or for his benefit a royalty of 10 per cent. on the published price of all copies sold. And even before that period has expired, at any time after the death of the author of a published work, if the owner of the copyright refuses to republish or to allow the republication or the performance in public of the work, petition may be made to the Privy Council and an order obtained for a compulsory licence to reproduce or perform the work if it would otherwise be withheld from the public, on such terms and subject to such conditions as the Privy Council may think fit.

In the case of joint-authors, copyright lasts for the life of the one who dies first and either another fifty years *or* the life of the one who dies last, whichever period is the longer.

Ownership of Copyright.

As a rule the author of a work, or the owner of the original negative in the case of a photograph, is the first owner of the copyright therein. But where the plate or other original of an engraving, photograph, or portrait has been made to the order of some other person for valuable consideration, such other person is the first owner of the copyright ; and when the author made the work in the course of his employment, the employer is, in the absence of contrary agreement, the owner of the copyright. But where a contributor writes a magazine article for which he is not paid by the publishers, the copyright is in him and not in the publishers.

The owner of the copyright may assign the right, either wholly or partially, and either generally or subject to territorial limitation, and either for the whole term of its duration or for any part thereof. He may also grant any interest in the copyright by licence. No such assignment or licence is valid unless it is in writing signed by the owner or his duly authorized agent (but it need not be by deed). But if the author of a work is the first owner of the copyright, no assignment or licence made by him (unless by will) after the passing of the Act will give any rights

for a longer period than twenty-five years after the death of the author. The reversionary rights pass on his death to his personal representative, and any agreement purporting to dispose of such reversionary rights is void. This provision does not apply, however, to copyright in a collective work or to a licence to publish a work as part of a collective work.

In the case of letters, the writer has the copyright therein, but the property in the paper is in the person to whom the letter is written. The writer can restrain publication, and the receiver can sue for possession if another person has obtained possession of the letter.

International Copyright.

It is provided in the Act that by Order in Council the Act or any parts of it may be applied—

(1) To works first published in a foreign country as if they were published within the parts of the British Dominions to which the Act extends ;

(2) To literary, dramatic, musical and artistic works, or any class thereof, where the authors were at the time of the making of the work subjects or citizens of a foreign country, as if such authors were British subjects ;

(3) In respect of residence in the foreign country to which the Order relates, as if it were residence in the parts of the British Dominions to which the Act extends.

And the law of copyright extends to that country to which the Order applies. Reciprocal agreements are in existence between the United Kingdom and most European countries in order that by this means scientific and other works and music may be available to the public and be reproduced in the United Kingdom, while enjoying full protection.

Copyright in Designs.

Such copyright is governed by the Patents and Designs Act, 1907. It is obtained for five years only, by registration, and it may be extended by second and third periods of five years each by re-registration. At any time after the registration of a design any person interested may apply for the cancellation of the registration on the grounds—

(1) That the design has been published in the United Kingdom prior to the date of registration ;

(2) That the design is applied by manufacture to any article in a foreign country, and is not so applied by manufacture in the United Kingdom to such an extent as is reasonable in the circumstances.

Design is " any design applicable to any article, whether the design is applicable for the pattern or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, etc.," e.g., the mascot on the bonnet of a Rolls-Royce car.

CHAPTER 13

LIMITED LIABILITY COMPANIES

As stated in Chapter 5, no partnership may be formed to consist of more than ten persons in a banking business or more than twenty in any other business, and any association for profit exceeding that number must be registered under the Companies Acts, or be incorporated by Statute, or Charter, or Letters Patent. It is proposed in the present chapter to consider those registered under the Companies Acts, the others being, so far as regards their formation and administration, outside the scope of this work.

The principal statute dealing with companies is the Companies (Consolidation) Act, 1908, which consolidated all previous legislation relating to joint-stock companies, and is amended so far as concerns " private " companies by the Act of 1913, and as regards minor matters by the Acts of 1917. The Act of 1908 will be referred to herein as " the Act."

The most important and by far the most usual form of company is one in which liability is " Limited by Shares " ; the other two forms of company coming within the purview of the Act are companies " Limited by Guarantee " and " Unlimited Companies." The two latter will be touched upon only lightly herein, owing to their very slight importance in the mercantile world.

The importance of limited liability lies in the fact that the liability of the members is absolutely restricted to the amount subscribed for shares in the first form, or to the amount guaranteed on becoming a member in the second form. Unlimited companies are, as regards liability, on practically the same footing as Partnerships and will not be further considered here. It may be noted that a registered company may become a Limited partner in a partnership under the Limited Partnership Act, 1907.

When certain persons propose to combine for the purpose of entering into business they may form either a partnership or a company. If the numbers are in excess of those mentioned

above, they must form a company ; or, even if the numbers are not so large, they may wish to limit their liability, in which case they will form a company rather than a Limited Partnership, because in the former case the liability of *all* the members may be limited to the nominal amount of their shares.

Having decided to form a company, they then have to answer five main questions :

(1) What is to be the *name* of the company ?
(2) Where is the *registered office* to be situated ?
(3) What are to be the *objects* of the company ?
(4) How far shall the *liability* of the members be restricted ?
(5) What amount of *capital* is necessary ?

The answers to these questions are embodied in a document known as the Memorandum of Association, which ends with what is called the " Association clause " signed by not less than seven persons (except in the case of private companies, which are considered later) who must each agree to take at least one share in the company. The Memorandum, with other documents referred to hereinafter, is then filed with the Registrar of Joint Stock Companies, and the first official step in the formation of the company has been taken.

MEMORANDUM OF ASSOCIATION

Name

The name of the company must end with the word " Limited," apart from which it may be almost anything, provided it is not so like the name of any existing company or firm as to lead to confusion. The words " royal " or " imperial " and similar words must not be used without authority. A company may change its name by consent of the Board of Trade, after passing a special resolution (*h*) to that effect.

Registered Office.

The situation of the Registered Office fixes the domicil. In the Memorandum it must be stated whether it is in England (which includes Wales), Scotland or Ireland. All notices are served on the *company* at this office, and the Register of Members is kept there. The domicil cannot be changed without consent of Parliament.

Objects.

The company will have a main object or objects and, usually, certain subsidiary or incidental objects. These objects are

(*h*) See *post*, p. 281.

expressed in very wide terms, for this clause cannot be changed without leave of the Court, and anything done outside the scope of the clause is *ultra vires* and void, unless the acts are those deemed "fairly incidental" to the objects of the company. If the main object of the company is gone, the company must be wound-up.

The company may alter or extend the objects clause of its Memorandum by special resolution confirmed, on petition, by the court—

(1) To carry on its business more economically or efficiently;
(2) To attain its main purpose by new or improved means;
(3) To enlarge or change the local area of its operations;
(4) To carry on some other business which may be conveniently combined with its own;
(5) To restrict or abandon any of its objects, except the main object.

Limitation of Liability.

The memorandum must state "That the liability of the members is limited." In the absence of any further wording this means "limited by shares," that is to say, no shareholder can be called upon to pay more than the amount remaining unpaid upon the amount of his shares, and if his shares are fully paid up he has no further liability. If the company is to be limited by guarantee, a further clause must be added, viz., that each member undertakes to contribute to the assets of the company in the event of its being wound-up while he is a member, or within one year afterwards, for payment of debts, etc., contracted before he ceases to be a member, such amount as may be required, but not exceeding a specified sum.

A bank of issue registered under the Act as a limited company is not entitled to limited liability in respect of any notes it issues, and the members are liable to an unlimited extent in respect of the notes so issued.

Capital Clause.

This clause must state the amount of share capital with which the company proposes to be registered, and its division into shares of a fixed amount. There is no limit to the amount of capital or of each share. If there are different classes of shares, it need not be so stated in the Memorandum, but it must be so stated in the Articles; sometimes, however, the rights of Preference shareholders are specified in the Memorandum to give them greater protection.

Association Clause.

This clause runs "We . . . are desirous of being formed into a company . . . and we respectively agree to take the number of shares set opposite to our respective names." Then follow the signatures and description of each signatory. There must be at least *seven* (except in the case of private companies, when the minimum is *two*, and they must take at least one share each. An infant may subscribe to a Memorandum of Association, his contract being voidable, not void. A foreigner may subscribe if the management is to be carried on in the United Kingdom; moreover, an English registered company, even though all its members are foreigners, may own a British ship. (*i*)

The signatures must be attested by a witness; one will suffice for all signatures.

The duties of the subscribers are:—

(*a*) To pay for the shares for which they have subscribed,
(*b*) To sign the Articles of Association,
(*c*) To appoint the first directors,
(*d*) To act as directors until the appointment of first directors, unless it is otherwise provided by the Articles.

ARTICLES OF ASSOCIATION

The Memorandum outlined above fixes the powers and objects of the company as between itself and the outer world. Another document is drawn up which defines the relations of the company and members as between themselves. This is called the Articles of Association and, in these Articles (or Regulations), the whole internal management of the company is dealt with. They form a binding contract between the members and the company to the same extent as if each member had signed and sealed the document, and usually provide for such matters as appointment of directors, shares and share certificates, borrowing powers, register of members, meetings, votes, and resolutions.

The Articles of Association are signed, in the presence of a witness, by the same subscribers who signed the Memorandum.

It is essential that Articles be printed and stamped as a deed. They are subject to the Memorandum and cannot include any powers not given by the Memorandum; and they must not contain anything illegal. The Articles can be changed by the members, by passing a special resolution, provided that the articles as altered do not contain anything illegal or go outside the powers given by the Memorandum and, further, that the alteration does not constitute a fraud on the minority. An

(*i*) See *ante*, p. 36.

arrangement which benefits the company as a whole will, however, be allowed, even if unfair to individual shareholders.

A model form of Articles, called *Table A*, is set out in the First Schedule to the Act. It is not necessary for a company *limited by shares* to file its own Articles and, if it does not, Table A applies and becomes the Articles of the company ; and, even if special Articles are filed, Table A still applies except in so far as it may be expressly excluded or modified by the special Articles.

The Articles, together with the Memorandum, are registered with the Registrar of Joint Stock Companies at Somerset House. Both documents may be inspected by a member of the public for a fee, but only members of the company are allowed to have copies. As a result, any person dealing with the company is deemed to have notice of their contents, and he contracts with the company at his own risk if he has not taken steps to ascertain the powers of the company and of the directors. But by the Rule in the *Royal British Bank* v. *Turquand* (1856), persons dealing with the company are not bound to inquire whether all necessary steps have been taken, provided an act done is not *inconsistent* with the Memorandum and Articles. In this case the directors had power to issue bonds, if authorized by a Special Resolution. They issued a bond to *A* without any resolution having been passed. It was held that *A* could sue on the bond, as he was entitled to assume that a resolution had been passed.

FORMATION OF COMPANY

In addition to registering the Memorandum and Articles of Association, the persons who wish to form the company must file five other documents :—

(1) A list of persons who have consented to become directors,
(2) The written consent of the directors to act,
(3) A statutory declaration that the requirements of the Act have been complied with,
(4) A statement of the nominal capital,
(5) A separate form containing the exact address of the Registered Office.

When these documents have been filed and the proper fees paid, the name of the company is entered in the Register at Somerset House and the company comes into legal existence, a Certificate of Incorporation being issued, and the company must forthwith adopt a common seal for the purpose of sealing its contracts. But, even now, unless the company is a " private " company, it cannot commence business until several things have happened, as specified in Section 87 of the Act, viz.,

(*a*) That the amount of the minimum subscription (if any)

mentioned on the issue of its share capital has been subscribed;

(*b*) That each director has paid on every share he is liable for, in cash, the same amount as members of the public must pay on application and allotment;

(*c*) That a statutory declaration has been filed that this has been done;

(*d*) If there is no prospectus, that a Statement in Lieu of Prospectus has been filed.

On the filing of the statutory declaration, the Registrar of Joint Stock Companies certifies that the company is entitled to commence business.

If any contract had been made by the company after incorporation and before the date of this certificate it is provisional only, and not binding on the company, but on such date it becomes binding.

Sometimes preliminary contracts are made between vendors of a business or a concession and another person who purports to act as agent or trustee of the company which is about to be formed. As was mentioned in the chapter on AGENCY, an agent cannot contract for a non-existent principal; and, therefore, the company when it comes into existence is not bound by such contract, neither can it sue the vendor on the contract. The company not having been in existence at the time of making the contract, it cannot legally ratify it and the agent remains personally liable, as was held in *Kelner* v. *Baxter*, already cited. (*k*) In order, therefore, to avoid these results, such contracts usually provide that the agent's liability shall cease on the company adopting the contract; and that, if the company should not adopt it within a specified time, either party may rescind the contract.

The company, by *adopting* the contract, enters into a new agreement to carry out the preliminary contract—it does *not ratify* the original preliminary contract. It is comparatively rare now for preliminary contracts to be entered into; the contracts are usually not made until after the incorporation of the company.

PROMOTION AND PROSPECTUS

The Promoter.

The persons who are the subscribers to the Memorandum and Articles of Association have usually been brought together by one person who conceived the idea of forming the company. He will, in that connection, have taken the necessary steps to accomplish his purpose, but he still has other matters to attend to before the company is a going concern. Such a person is

(*k*) See *ante*, p. 82.

called a " promoter," and he has been defined in *Twycross* v. *Grant* (1877) as " one who undertakes to form a company with reference to a given object, and to set it going, and who takes the necessary steps to accomplish that purpose." The company not yet being in existence he cannot be agent or trustee for it, but he stands in a fiduciary relation as if he were a trustee, and must refund any secret profits, etc. If, therefore, as is often the case, the promoter should desire to sell his own property to the company, he must *either* disclose all the facts in the prospectus issued to the public *or* see that the directors appointed to the board of the company are independent persons. The promoter must not make unfair or unreasonable use of his position, and must avoid anything which has the appearance of undue influence or fraud.

After the company is formed, a circular called a " prospectus " is sent round by the promoter or promoters to induce the public to subscribe for shares in the company. The Act defines the prospectus as " any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company." As the main point is to tempt the public to subscribe, the prospectus is made as attractive as possible. But to prevent the public from being misled or defrauded, Section 81 of the Act makes certain disclosures necessary.

The promoter must not make untrue statements, otherwise—

(1) An allotment of shares may be set aside on the ground of misrepresentation, and

(2) He may be sued—

(*a*) For damages for fraud, and

(*b*) For compensation for misrepresentation under Section 84 of the Act for statements which he believed true but which were not so, *if he had no reasonable grounds for his belief.*

But the shareholder cannot both retain his shares and recover damages.

The Prospectus and its Requirements.

Every prospectus must be dated, a copy must be signed by every director (or his agent authorized in writing) and filed with the Registrar. On the face of the prospectus it must be stated that a copy has been so filed. The prospectus must state—

(1)* The contents of the Memorandum;

(2)* The number of shares, if any, fixed by the Articles as the qualification of a director, and the remuneration of the directors;

(3) The names, descriptions, and addresses of directors;
(4) The minimum subscription on which the directors may proceed to allotment;
(5) The number of shares or debentures issued as fully or partly paid up otherwise than in cash;
(6) The names and addresses of the vendors and the amount payable to each;
(7) The amount of the purchase money, specifying the amount paid for goodwill;
(8) The amount of the underwriting commission, if any;
(9)* An estimate of the preliminary expenses;
(10) The amount paid to any promoter and the consideration therefor;
(11) The date of, and parties to, any material contract and a reasonable place where it may be inspected, unless made in the ordinary course of the company's business or more than two years before the prospectus was issued;
(12) Names and addresses of the auditors, if any;
(13)* The interest of every director or promoter in the promotion of or in the property to be acquired by the company and any shares paid to induce him to become or to qualify him as a director;
(14) Where the shares are of more than one class, the rights of voting attached to the several classes.

If the prospectus is issued more than a year after the company is entitled to commence business the provisions marked " * " do not apply. Should any condition be inserted in the prospectus binding an applicant for shares to waive the provisions of the Act in this connection, the condition is void.

If the company does not issue a prospectus, it must file with the Registrar " a statement in lieu of prospectus " which contains most of the information required in a prospectus. It should take the form prescribed in the Second Schedule to the Act. If the company (other than a private company) should allot any shares or debentures before filing the statement in lieu of prospectus, such allotment is void.

Misrepresentations.

Remedy against Company.—Where a prospectus contains misrepresentations, any person who has taken shares on the faith of such representations may, even though the misrepresentation is made innocently, rescind the contract to take the shares and make application for his name to be struck off the register of members. He must, however, show that the representation did in fact induce the application for shares, although

that need not have been the sole reason. The application for rescission must be made within a reasonable time of discovery of the misrepresentation and, in any case, before proceedings to wind up the company have been commenced. He will then be entitled to the return of his money, and 4 per cent. interest thereon.

Remedy against Promoter or Directors.—The person who has taken shares by reason of the misrepresentation may commence proceedings against those responsible for the publication of the prospectus—

(1) *For Fraud.*—In which case he must show that fraud as already defined in Chapter 1 actually exists.

(2) *For Compensation under Section* 84.—In which case it will be for the persons responsible to show that—

(*a*) They made the statements honestly and had *reasonable* grounds for believing them to be true, or

(*b*) They made them on the report of an expert believed on *reasonable* grounds to be competent, or

(*c*) The statements were an exact copy of an official document.

Where the statement complained of is the report of an expert, the promoter or directors are not liable if they have clearly warned the public in the prospectus that they do not vouch for the accuracy of the report.

No action can be brought under Section 84 against the personal representative of a deceased director.

UNDERWRITING

Prior to making an issue of shares or debentures, a company frequently enters into an agreement with certain people termed " underwriters " who undertake, in consideration of a commission, to subscribe for the whole or such a portion of offered shares or debentures as may not have been applied for by the public. Such agreements are allowed by Section 89 of the Act, subject to the following conditions—

(1) The agreement and rate of commission must be disclosed in the prospectus or statement in lieu of prospectus.

(2) The commission must not exceed the rate authorized by the Articles of Association.

Any other form of commission or discount is illegal. But this does not prevent a company from paying the usual " brokerage " to a person who *places* shares, i.e., a person who does not take them himself but who finds other persons to take them.

ALLOTMENT OF SHARES

The prospectus having been issued and advertised, the public make application for shares in accordance with the form usually inserted in the prospectus. The *application* is an offer to take shares, and the *allotment* by the company is the acceptance of that offer. But there is no binding contract until the allotment has actually been made, and notice thereof posted, or in some other way made known to the allottee. (*l*) No shares may be allotted until the " minimum subscription " has been subscribed and the amount due on application has been paid. This amount must not be *less* than five per cent. of the nominal value of the shares. Should the " minimum subscription " not be subscribed within forty days after the issue of the prospectus, the money paid by applicants must be returned within the next eight days, or interest becomes payable on it.

MEMBERS

On the allotment being made, *and when his name is entered on the register of members*, the applicant becomes a member or shareholder of the company. There are, however, other ways in which a person can become a member—

(1) The persons who have signed the Memorandum are deemed to have agreed to become members, and must therefore be put on the register of members. They must take and *pay* for the shares for which they have subscribed, and must take them from the *company*.

(2) Persons who have taken a transfer of shares from a member.

In any case no person other than a subscriber to the Memorandum who has agreed to become a member actually becomes such until his name is put on the register.

A company may become a shareholder in another company if authorized by its Memorandum to hold shares, or if it takes shares in compromise of a debt. But the company may not acquire and hold its own shares, i.e., it cannot become a member of itself. Some companies provide by their Articles that they may refuse to register a married woman as a member if there remains any liability on the shares. An infant may become a member of a company subject to his common law right of repudiation on attaining his majority ; but he may, of course, dispose of his shares by transfer at any time before attaining majority.

Limit of Liability of Members.

A member of a company is liable to pay in cash *the whole of the nominal amount* of the shares he holds, e.g., if one £100 share

(*l*) See *ante*, p. 29.

is held with £25 paid up, the member is *liable* for the remaining £75 should it be required by the company. It may be " called " from time to time, and as required, by the directors in accordance with the company's regulations; and should the company become insolvent and there remain any amount unpaid on the nominal amount of the shares, this would be called up to the extent necessary to satisfy the company's indebtedness, but if the shares were fully paid, nothing further by way of contribution could be demanded from the shareholders. From this rule it follows that *shares cannot be issued at a discount.*

Shares are often issued as fully paid up as consideration for the sale of a business or for services rendered. But if this is done, the company must file with the Registrar within one month a contract in writing (or if not in writing, particulars thereof) showing the title of the shareholder and the consideration he gave. The person to whom they are allotted may be held liable on three grounds—

(1) If the contract is fraudulent
(2) If the consideration is illusory
(3) If the contract on the face of it shows that the consideration is of less money value than the shares allotted.

A past member remains liable to some extent for the unpaid amount of his shares up to the period of one year after transferring them. Should the company be wound-up within that period, his name would be put on what is known as the " B " list. On winding-up, two lists are made out, viz.,

(1) The " A list," or list of present members, and
(2) The " B list," or those persons who have ceased to be members within one year before the winding-up.

If the member on the " A list " cannot satisfy the amount required of him in respect of those shares, for debts incurred while the transferor was a member of the company, he (the transferor) will be liable to the extent of the amount unpaid on those shares.

Register of Members.

Every company is bound to keep a Register of Members, which contains the names and addresses of all members, their occupations, the amount and numbers of the shares held, the date of acquiring them, and the amount paid up. The register may be inspected, gratis, by members, and by the general public for a fee not exceeding one shilling. Any person may have a copy at the price of 6*d.* per 100 words, but he must not himself take a copy or extracts. The register may be closed for a period or periods not exceeding thirty days in any one year, by making

due announcement by advertisement. In such case, no transfer of shares may take place while the register is closed; and this is generally done for the purpose of preparing the dividend warrants. No notice of any trust can be entered on the register. This does not mean that there cannot be a trust of shares; but, if there is, the *trustee's name* is put on the register and he is liable as a shareholder. An executor may be put on the register on proof of his title, but the entry is not qualified to show that he holds in a representative capacity. An executor will not be personally liable for calls unless he has applied to be put on the register, or he buys shares with money belonging to his testator's estate, but, even then, he is entitled to be indemnified from the estate.

Annual Return.

The company must make a list of its members and of all who have ceased to be members since the date of the last return and send it to the Registrar of Joint Stock Companies every year, together with the "Annual Summary" which should contain the following particulars—

(1) The amount of share capital of the company and the number of the shares;
(2) The number of shares taken since the commencement of the company;
(3) The amount called up on each share;
(4) The total amount of calls received and unpaid;
(5) The total amount of any sums paid by way of commission in respect of any shares and debentures since the date of the last return;
(6) The total number of shares forfeited;
(7) The total amount of shares or stock for which share warrants are outstanding;
(8) The total amount of share warrants issued and surrendered respectively since the date of the last return;
(9) The number of shares or amount of stock comprised in each warrant;
(10) The names and addresses of persons who are at the date of the return directors of the company or who occupy the position of directors;
(11) The total amount of debt due from the company in respect of all mortgages and charges which are required to be registered in England with the registrar;
(12) A statement in the form of a balance sheet, audited by the company's auditors;
(13) Particulars required by the Companies (Particulars as to Directors) Act, 1917—similar particulars to those

required under the Registration of Business Names Act, 1916, (*m*) viz. :—The present Christian name and surname, any former name, nationality, and, if that is not the nationality of origin, the nationality of origin, and usual residence ; also any other business carried on or the name of any other company of which he is a director.

[The Act further provides that the provisions of the Registration of Business Names Act with respect to the publication in trade catalogues, trade circulars, show cards, and business letters of certain particulars shall apply to every company which since November, 1916, has been registered or, if incorporated outside the United Kingdom, has established a place of business here, as if the directors of the company were partners in a firm required to be registered under the Registration of Business Names Act.]

SHARES

A share is a right to a certain proportion of the profits of a company and, when the company is wound-up, of the capital also.

Share Certificates.

All shares in a company are numbered, and the shares of each member are identified thereby. Every member has a right to a certificate of his shares, and it must be ready for delivery within two months after allotment or transfer. " A certificate is a statement that the company asserts that the person to whom it is granted is the registered shareholder entitled to the shares included in the certificate and that the amount certified to have been paid has been paid." (*n*)

The company may be liable by estoppel as to title, and estoppel as to payment. If the company has issued a certificate stating that a certain person is the registered holder of specified shares, it cannot afterwards allege that he is not entitled to them. Thus, in *Dixon* v. *Kennaway* (1900), *A* applied to *B*, who was secretary to a company and a stockbroker, for 300 shares in the company. The clerk to *B*, who owned no shares, executed a transfer of 300 shares to *A*. The company registered the transfer without requiring production of the certificate and issued a new certificate, and it was held that the company was estopped from denying

(*m*) See *ante*, p. 148.
(*n*) Buckley, *Company Law*, p. 42.

the validity of the certificate issued to *A*, and was liable to her in damages.

But there is no estoppel where an officer of the company issues certificates without the authority of the company. So in *Ruben* v. *Great Fingall Consolidated* (1906), where *A* lent money to the secretary of the company on the security of a share certificate, whereon the secretary had signed his own name and had forged the names of two directors and had affixed the seal of the company, it was held that the certificate was simply a forgery and the company was not bound by it.

If the company has stated on the certificate that the shares are fully paid, it cannot afterwards allege that they are not fully paid. The leading case on this point is that of *Bloomenthal* v. *Ford* (1897), where *B* agreed to lend £1,000 to a company on the security of 10,000 fully paid shares, and the company issued a certificate for 10,000 shares on which they were stated to be fully paid, although in fact nothing had been paid. The company was afterwards wound-up and *B* was put on the list of contributories ; but it was held that he must be removed from the list as the company and the liquidator were estopped from denying that the shares were fully paid.

Transfer of Shares.

Shares may be freely transferred, subject to any restriction in the regulations, and power is usually given to the directors to refuse a transfer where calls are in arrear ; but sometimes the directors have discretionary power without assigning any reasons. The transfer is effected by a deed or other instrument in writing, in accordance with the Articles. If the Articles are silent on the point, the transfer must be in writing signed by the transferor, but need not be by deed. The transfer, usually accompanied by the certificate, is sent to the registered office of the company. When the name of the transferee has been entered in the register as a holder of the shares he becomes a member of the company. Should a transfer be forged and the company register the transfer and give a certificate to the transferee, the true owner of the shares is entitled to be put back on the register, and the company is not liable in damages by putting the transferee's name on the register. But, as was further held in *Bloomenthal* v. *Ford* (1897), cited above, if a certificate is issued and a person acts on it in good faith and suffers damage, the company will be liable.

By the Forged Transfers Acts, 1891 and 1892, a company is empowered to make compensation for any loss arising from a transfer of shares or stock in pursuance of a forged transfer or

of a transfer under a forged power of attorney, and for this purpose may provide a fund to meet such claims for compensation by charging a fee on every transfer, or in any other manner they may resolve upon.

Transmission of Shares.

On the death of a member his shares vest in his personal representative, who can sell the shares and transfer them to another person, or can himself be registered as a member. In the bankruptcy of a shareholder the trustee in bankruptcy takes his place and can sell and transfer the shares, or he may repudiate them as being " onerous property " if there is any liability still attaching.

Share Warrants.

When shares are fully paid, the company may issue SHARE WARRANTS stating that the *bearer* of the warrant is the holder of the shares specified therein ; but only if authorized to do so by its regulations. The shares are then transferable by mere delivery of the warrant. Such warrants are probably negotiable instruments.

When a share warrant is issued, the name of the shareholder of the shares affected is struck off the register of members, and entry of the particulars of the warrant is made therein. As the company does not in future know who is the bearer of the warrant nor, therefore, to whom the dividends are due, " coupons " dated for dividend periods for some years ahead are sometimes attached to the warrant. On the due date the appropriate coupon is detached and presented for payment. When the shares are sold, no transfer is necessary in the company's books ; delivery of the share warrant is sufficient to transfer the ownership of the shares and no new issue of a certificate is necessary as is the case when shares are sold for which share certificates are in existence.

Calls.

Shares are rarely paid up in full on allotment, e.g., a £10 share may be offered to the public payable £1 on application, £1 on allotment, another £1 in two months' time, and the balance of £7 when called for. If the company needs more working capital, the directors make a " call " in the manner specified in the Articles. If authorized by the Articles, the shareholders may pay up money " in advance of calls " and receive interest thereon ; but this power must only be permitted to be exercised if for the benefit of the company. Where a shareholder has thus paid up money in advance he becomes a creditor of the company

for interest on the amount; and, if there are no profits the interest must, nevertheless, be paid, if necessary *out of capital.*

Forfeiture and Surrender of Shares.—If power is given to them by the Articles, the directors have power to declare the shares of a member *forfeited* for non-payment of calls, but not otherwise. When shares are forfeited in accordance with the Articles, they become the property of the company and may be sold for any price it is possible to get—that is to say, in this instance shares may be sold by the company at a discount; but they probably remain unpaid to the extent they were so before forfeiture. As a rule, forfeited shares would be sold for an amount which, together with the amount already paid, would equal the sum due, that is, the total amount would be the same as that paid by other members on their shares. It is not essential, however, that the amount for which they are sold should be this exact amount; but, if not, any surplus or deficiency must be shown in the accounts of the company quite apart from the paid-up capital. Forfeited shares cannot be *cancelled* without leave of the court, as this would be a reduction of capital, which is not allowed except by the approval of the court.

Sometimes the Articles authorize the directors to accept *surrenders* of shares. This obviates the necessity for the formality of forfeiture, if the member is willing to make the surrender. If the shares are not fully paid, however, surrender can only be accepted where a forfeiture would be justified; and even fully paid shares must not be surrendered for the purpose of being cancelled. This question of surrender is still a matter of uncertainty, as there are conflicting decisions.

The Articles will, as a rule, provide that the company has a first *lien* on the shares for the debts and liabilities of the member to the company, and power is often given to enforce the lien by sale.

CAPITAL

Terms used in connection with Capital.

The capital of the company is, normally, the amount subscribed by members for the purpose of carrying on the company's business. But the term is used in several senses. The sum authorized by the Memorandum of Association to be issued is called the *Nominal or Authorized Capital.* This may not necessarily be all issued at once, and the amount issued for subscription, which may or may not coincide with the amount of the Nominal Capital, is termed the *Issued Capital.* The amount for which the public make application and for which shares are allotted is termed the *Subscribed Capital.* This may be less

than the full amount issued. The amount paid up or credited as paid up on the shares issued is termed the *Paid-up Capital.* This will be the same amount as the Issued Capital if all the shares issued were subscribed for and fully paid up. If only part was subscribed for, or if the shares are not fully paid up, the Paid-up Capital will be of less amount than the Issued Capital. Where the shares are not fully paid up, the amount remaining outstanding and liable to be called for by the directors is termed *Uncalled Capital.* It can only be called up at the periods and under the conditions given in the Articles of Association. There are other uses of the term—" Capital Assets," meaning the actual property of the company, and " Debenture Capital," the amount borrowed and secured by debentures. This latter phrase is, however, not a proper use of the term, as borrowed money is not, strictly speaking, capital.

Reserve Capital means that a company may, by Special Resolution, determine that any portion of its share capital which has not been called up shall not be capable of being called up except in the event and for the purpose of the company being wound-up. Such portion of the capital cannot be called up, except in the event of winding-up the company. Provision of this nature is always made in the case of banking companies in order to render the business stable and to provide against the possibility of the company losing its whole capital in the ordinary course of trading.

Reduction of Capital.

The capital of a company may be reduced by a special resolution, confirmed by the court, in accordance with Section 46 of the Act. The Articles must give power to reduce and, if they do not, they must be altered by special resolution in order to empower the company to pass the special resolution authorizing the reduction of capital. Where the court has confirmed the petition of the company to reduce its capital, the order of the court must be advertised, and the words " and reduced " must be added for a time to the name of the company.

Classes of Shares.

The division of the capital into classes of shares or stock may be authorized by either the Memorandum or Articles. The Memorandum would usually specify the division of the capital into various classes, and the Articles would define the rights of each class. Possibly the most usual division is into

Preference Shares ;
Ordinary Shares ;
Deferred Shares.

Preference shares.—The holders are usually entitled to a certain specified dividend before any dividend is paid to the holders of the ordinary shares. These shares may be "cumulative," that is, if the profits in one year are not sufficient to pay the agreed dividend, the deficiency is made up in subsequent years. All preference shares are deemed to be cumulative unless expressly stated to be non-cumulative. It is sometimes provided that Preference shares shall be "participating," that is, when a certain rate of dividend has been paid on the ordinary shares, etc., the preference shareholders shall receive, say, one-fifth, or any other proportion, of the surplus profits. Should the preference shares be stated to be "preferential as to capital," after payment of the debts of the company, upon liquidation, the surplus capital will first be used in paying off the capital of the preference shareholders.

Ordinary shares.—These receive the whole of the balance of profits, if there are no Deferred shares or Participating Preference shares.

Deferred shares.—These shares are often termed "Founders' shares" as they are, as a rule, taken by the promoters of the company. If they have been allotted to the promoters as fully paid in consideration of their having borne the expenses of promotion, or for other services, a contract or particulars thereof must be filed with the Registrar. In some cases, Deferred shares are most valuable and receive large dividends, but of course their relation to the remaining shares of the company depends upon the Articles.

Stock.

When shares are fully paid they may be turned into Stock. This means that the shares are, in effect, consolidated and redivided. The divisions are not necessarily equal parts as shares are, but may be of any amount. So it is possible to hold, say, £5 7*s.* 6*d.* worth of stock, where the shares had been £5 each. The cost of such stock will depend upon the market price per cent., e.g., if quoted at 80, the cost of £5 7*s.* 6*d.* worth of stock would be £4 6*s.*, excluding Brokerage. Stock may be either registered or unregistered, the difference being practically the same as that between share certificates and share warrants.

Alteration of Capital.

If authorized by its regulations, a company may *increase* or *alter* its capital by any method so provided; but to *reduce* the capital requires a special resolution and the consent of the court. In accordance with any method laid down in the Articles, the

Nominal capital may be *diminished* by the cancellation of shares that have *not been taken up*, and obviously this is not a reduction of *Issued* capital.

DIVIDENDS

Profits earned as a result of the employment of the capital in the business are divided amongst the shareholders in proportion to the amount of their holding and in accordance with the priorities attaching to the various classes of shares. Such returns on capital invested are known as *dividends*.

Dividends can only be paid out of profits, and not out of capital, with one exception, namely, where shares are issued for the purpose of the construction of works or provision of plant which cannot be made profitable for a lengthened period, the company may pay interest on such capital, with the sanction of the Board of Trade, at a rate not exceeding 4 per cent. per annum, and may charge such interest to capital as part of the cost of the work. Any improvement or appreciation of fixed capital may be counted as a profit; but it would be prudent to capitalize such a profit and not distribute it as dividend. The mode of payment is as provided by the Articles of the company. The usual method of payment to holders of share warrants has been referred to under the heading of SHARE WARRANTS. As a rule, the directors are empowered to declare the dividends with the sanction of a general meeting. The members cannot, as a rule, insist on the payment of dividends, even where there are ample profits, if the directors do not declare a dividend. If there is a reserve fund to which profits have been paid from time to time, such profits may be paid away as dividends, though there is a loss on capital.

As already stated, shares may not be issued at a discount, which of course would include "Bonus Shares," i.e., shares issued free of payment; but it is possible for a company having a reserve fund to apply part of the fund in paying for unissued shares, and then to issue those shares, in lieu of a dividend, to its members. The member, in effect, pays for the shares by acquiescing in the transfer of money, which he might otherwise draw as dividend, from the reserve fund to the share capital of the company.

DEBENTURES

Every trading company has implied powers to borrow money for the purpose of its trading, but the powers cannot be exercised until the minimum subscription has been subscribed; other companies cannot borrow unless the Memorandum of Association

gives power. The power to borrow carries with it the power to charge the company's property as security, and the power is, in some cases, limited by the Memorandum. If a company should borrow beyond its powers, such borrowing is *ultra vires* and void. There are several methods of securing repayment of the money borrowed, the most usual being a " floating charge," or sometimes a charge over specific property, evidenced by debentures.

Definition of Debenture.

A debenture is a document which is given by a company as evidence of a charge. It is defined by PALMER as " a security for money, called on the face of it a debenture, and providing for the payment of a specified sum at a fixed date, with interest half-yearly, and is usually one of a series." (*o*) But debentures may be evidence of merely a loan without any security : this, however, is unusual.

Debentures secured on the property and assets of the company are known as " Mortgage Debentures." The charge or mortgage may be created by words in the debenture or, what is more usual, by a deed conveying property to trustees for the benefit of the debenture holders.

In addition to debentures, there can be what is known as Debenture Stock. The difference is not very great, and is similar to the difference between shares and stock.

Kinds of Debentures.

The following are the broad classes of debentures—

(1) Debentures payable to a Registered holder, which are transferred in the same way as shares or stock.
(2) Debentures payable to Bearer, which are negotiable instruments. These can be sub-divided, giving additional classes.
(3) Debentures payable to a Registered holder, but with interest coupons payable to Bearer.
(4) Debentures payable to Bearer, but with power to the holder to have them placed on a register and to have them at any time withdrawn therefrom.

Some debentures are known as " Irredeemable Debentures," that is, the debenture holder can never demand payment as long as the interest is paid and the other conditions are observed.

Debentures need not be under seal ; but, if not, the consideration must be stated. They are, as stated above, frequently accompanied by a trust deed, by which specific property is vested in

(*o*) PALMER'S *Company Law*, 6th edn., p. 278.

trustees, to hold in trust for the debenture holders, such specific property becoming the security of the debenture holders.

Debentures are issued with a date fixed for repayment of capital, usually five, ten, or twenty years after issue, or they may be perpetual, or may be payable on demand.

Floating Charge.

By a " floating charge " is meant that the company is allowed to deal with its assets in the ordinary course of business until the charge becomes what is termed " fixed." It automatically becomes fixed, or " crystallizes," when the money becomes payable under any of the conditions contained in the debenture.

Such conditions usually are—

(1) If the company makes default for a period of three months in the payment of interest and the holder then calls in the money; or
(2) If distress or execution is levied on assets of the company and not paid out within seven days; or
(3) If an order is made or resolution passed for the winding-up of the company; or
(4) If a receiver is appointed.

Registration of Debenture Issues, Mortgages, and Charges.

By Section 93 of the Act, all debentures issued and, in fact, any mortgage or charge created by a company, must be registered with the Registrar of Joint Stock Companies within twenty-one days of creation, as well as in the Company's Register of Mortgages and Charges, but need not be registered under the Bills of Sale Acts.

Remedies of Debenture Holder.

If default is made in payment of the principal or interest secured by the debenture, the debenture holder has the following remedies—

(1) To *sue for repayment* of principal, with any interest due.
(2) To appoint a *receiver*, if empowered by the terms of the debenture or, in the absence of such power, to apply to the Court to appoint.
(3) To apply to the court for *foreclosure*.
(4) To present a *winding-up petition* against the company.
(5) To have the property *sold*, if this is authorized by the debenture trust deed.

A debenture holder is a secured creditor, so if the company should become insolvent he may value his security and sue for

the balance of debt, or give up the security and sue for whole amount.

The second remedy is that more usually adopted, as it offers prospects of the company being extricated from its difficulties, which may prove to be of a temporary nature only.

Unlike shares, debentures may be, and often are, issued at a discount.

MANAGEMENT OF THE COMPANY

Directors.

Although a company need not have directors, it is usual to appoint certain members who manage the business, make contracts on behalf of the company, and generally look after the property of the company and the interests of the shareholders. Such a person is ordinarily termed a director ; he is a combination of trustee and agent for the company, and the body of persons so appointed constitutes the Board of Directors. Usually, one or more directors are appointed as Managing Directors who, in addition to being directors, also manage the business in greater detail. Often one director is appointed Chairman of Directors, in which case he presides at all meetings of directors and also at company meetings.

Agency of Directors.

The directors are agents when they make contracts, unless they contract in their own names. If a director does an act beyond his powers as director, but not beyond the powers of the company, such contract is voidable if made with a member of the company ; but, if made with an outsider who had no notice of the want of powers, the company is bound. If the contract is beyond the powers of the company, it is *ultra vires* and void. In such a case the director is not liable, except perhaps on an implied warranty of authority.

Directors as Trustees.

The directors are trustees for the company when exercising their power of issuing and allotting shares, making calls and approving transfers ; but they are not trustees for the individual shareholder, nor for third parties who have contracted with the company. In *Percival* v. *Wright* (1902), the directors were negotiating for the sale of the company at a high price, and while the negotiations were in progress they bought shares from a member without telling him of the proposed sale. It was held that the purchase of the shares was good.

Appointment of Directors.

Usually the first directors are named in the Articles of Association. If not so named, they may be appointed by the subscribers to the Memorandum—

(1) By a majority at a meeting;
(2) If no meeting is held, by writing signed by all the subscribers.

Subsequent directors are appointed in accordance with the Articles. If not provided in the Articles, the members have power to appoint in general meeting by virtue of the provisions of Table A, referred to on p. 259.

If the first directors are named in the Articles, their appointment is valid only if they have—

(1) Signed and filed with the Registrar a written consent to act; and
(2) Signed the memorandum for their qualification shares, or executed a contract to take them from the company and pay for them.

Share Qualification of Directors.

It is not essential that there should be a share qualification for directors ; but the London Stock Exchange refuses a quotation for the shares of the company if no qualification is necessary, and it is invariably the rule for it to be required, and such requirement must be disclosed in the prospectus. Frequently a small share qualification is all that is necessary. A director is bound to take up his qualification shares within two months of his appointment, and the company cannot commence business until every director has taken them up and paid the amount payable on application and allotment.

Unless given express power in the Articles, a director may not enter into a contract with the company ; nor may he receive any remuneration except as provided in the Articles.

Directors' Liability on Issue of Prospectus.

Any directors who were parties to the issue of the prospectus are liable for any misstatements therein and, under Section 84 of the Act, in addition to their common law liability they are liable to a further extent in that the burden of proof is on them and not on the plaintiff. To escape liability they must show—

(1) That they believed the statements to be true, and had *reasonable grounds* for doing so, or
(2) That the statements were based on the report of an expert

whom they had *reasonable grounds* for believing competent, or

(3) That the statement was a fair representation of an official document,

(4) Any director may show that he withdrew his consent to the prospectus and gave public notice of the fact.

MEETINGS AND RESOLUTIONS

As stated above, the directors manage the affairs of the company on behalf of the shareholders; but the shareholders themselves have some voice in the matter, in that amongst other business they themselves, at the meetings of the members, usually appoint new directors, or retain existing ones. There are several kinds of meetings which are held by companies—some compulsory, others optional—and there are also various kinds of resolutions that can be passed at these meetings.

Meetings of a Company.

Shareholders' meetings are of three kinds—

Statutory Meeting.—This is a general meeting, which must be held not less than one month and not more than three months from the date on which the company is entitled to commence business, (*p*) and a report must be sent to all shareholders seven days beforehand stating the particulars set out in Section 65 of the Act, viz.:—

(1) The total number of shares allotted, distinguishing shares allotted as fully paid or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted:

(2) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid:

(3) An abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company:

(*p*) See *ante*, p. 260.

(4) The names, addresses, and descriptions of the directors, auditors (if any), managers (if any), and secretary of the company ; and

(5) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

This ensures that all members shall be aware of the exact position of the company.

Ordinary Meetings.—Usually the Articles make provision as to ordinary meetings, which may be held as frequently as required. Generally, only one such meeting is held in the year, and this is termed the Annual General Meeting. Under Section 64 of the Act one must be held in every calendar year, and never more than fifteen months from the preceding meeting.

Extraordinary Meetings.—The directors may call a special meeting, termed an Extraordinary Meeting, if there is any business to be transacted that cannot wait till the next annual meeting ; and, under Section 66 of the Act, the members have the power to compel the directors to call such a meeting at any time. The members who wish the meeting to be called must hold at least one-tenth of the issued shares of the company upon which all calls or other sums then due have been paid. The necessary procedure is as follows :—

(1) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(2) If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.

(3) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting ; and if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(4) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly

as possible, as that in which meetings are to be convened by the directors.

This power may be extended by the Articles, but it cannot be restricted.

The above meetings are all general meetings, and similar business may be transacted at each, e.g., it is not necessary to call an extraordinary meeting to pass an "extraordinary" resolution providing the necessary formalities are observed as mentioned below.

The quorum is generally provided in the Articles; but, if not mentioned therein, at least three members must be present. If so provided in the Articles, *a member may vote by proxy*, but not otherwise.

Position as to Meetings generally.

The directors hold meetings from time to time, at which they discuss the details of the management and policy of the business. Such meetings are known as Board meetings; and it is the result of these deliberations that gives authority to the acts of the directors, for the directors must act as a board and not as individuals, unless the Articles otherwise provide. It is essential that accurate records should be kept of the proceedings at all meetings, whether of the company or of the directors. For this purpose, Minutes are written of all that takes place, which are read at the next meeting and, if approved as a correct statement, are signed by the Chairman. Such Minutes are then admissible as evidence of what took place at a particular meeting.

Every shareholder present at a shareholders' meeting has one vote unless, as is usual, the Articles provide that the voting shall depend on the number of shares held. Resolutions are put to the meeting by the Chairman, and voting is by show of hands and proxies do not count. If dissatisfied, any five members may then demand a *poll* in the case of an ordinary resolution, or three members in the case of a special resolution. A poll is taken by members signing a paper for or against the resolution, and a proxy is counted as a vote if so provided by the Articles. Sometimes the Articles provide that SCRUTINEERS shall be appointed to examine the votes given and to report as to the correctness of the result. In that case they must be appointed, and they may be appointed even if the Articles do not so provide.

In matters that affect the company as a whole, every member is entitled to be present at a company meeting of any kind; but where any particular rights are affected, only the shareholders of that particular class of shares are entitled to be present and vote.

Resolutions of a Company.

The resolutions at meetings of shareholders are of three kinds :—

Ordinary Resolution.—A resolution passed by a majority of members present at the meeting.

This is used for ordinary routine matters, e.g., to elect directors or to pass the accounts.

Special Resolution.—A special resolution necessitates two meetings. At the first the resolution must be passed by a three-quarters majority of the members present, and confirmed at the second by a simple majority. The second meeting must be held not less than fourteen days nor more than one month after the first.

Such resolutions are required, *inter alia*, in order to alter the Articles or to sub-divide shares.

Extraordinary Resolution.—This is a resolution passed by a three-quarters majority of those present ; it does not require confirmation. Notice must have been given beforehand of the intention to propose the resolution as an extraordinary resolution.

It may be used to wind-up a company voluntarily on the ground that it is unable to carry on its business by reason of its liabilities.

All resolutions must be moved and amendments may be proposed in the usual way. A copy of every special or extraordinary resolution must be sent to the Registrar within fifteen days of the confirmation or passing, as the case may be.

ACCOUNTS AND AUDITORS

The directors are bound to keep proper accounts and to render to the Registrar certain statements every year, these being included in the " Annual Summary."

An auditor or auditors must be appointed each year by the company at the annual general meeting. The first auditors are usually named in the Articles, and their names and addresses must be given in the prospectus. The appointment of auditor to a company is an important matter and is fully dealt with in Sections 112 and 113 of the Act. If appointed by the Articles, or at the annual general meeting, he is an officer of the company and equally liable with the other officers for a breach of trust.

The auditors have a right of access at all times to the company's books, accounts, and vouchers, and are entitled to demand

any information or explanation from the officers of the company. After examination of the books and balance sheet, the auditors report to the shareholders on—

(1) Whether or not they have obtained all necessary information and explanations;
(2) Whether, in their opinion, the balance sheet exhibits a true and correct statement of the affairs of the company.

The balance sheet, which should be signed by two directors, must have the auditors' report attached to it, or it must be referred to therein, and the report must be read at the general meeting.

In addition to keeping proper books of account, the company must keep the following statutory books :—

Register of Members;
Register of Directors or Managers;
Register of Mortgages and Charges;
Minute Books;
Annual Summary of Capital and Shares Book.

PRIVATE COMPANIES

Definition of a Private Company.

A " private company " is defined in the Act of 1908, as amended by the Act of 1913, as one which by its articles—

(1) Restricts the right to transfer its shares;
(2) Limits the number of its members to fifty; (But an excess over fifty consisting of employees of the company or those who were members while employees and have remained members, is allowed.)
(3) Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Any private company which fails to comply with these provisions ceases to be entitled to the privileges of a private company. But if the default was caused by accident or inadvertence, the court may grant relief.

Very often members of the same family hold all the shares in a private company and, in any case, all the shares are held by very few persons. Only two persons are needed to form such a company, and this method of limiting the liability of persons is being largely adopted. Even if practically all the shares are held by one man, the company is, nevertheless, regarded in law as having a *persona* entirely distinct from him ; and the company is not deemed to have knowledge of a matter simply because the principal member is aware of it.

Advantages of Private Companies.

Among the other advantages of a private company over a public company are the following—

(1) The Annual Summary need not include a balance sheet;
(2) No Statutory Report need be sent to the members, although the company must hold a statutory meeting;
(3) Directors need not file a consent to act, nor sign the memorandum, or contract for their qualification shares;
(4) The filing of a Statement in Lieu of Prospectus is not necessary;
(5) Shares may be allotted before the minimum subscription is subscribed;
(6) The company may commence business immediately it is incorporated;
(7) Holders of Preference Shares and Debentures have no statutory right to inspect the balance sheets.

A private company must send to the registrar with the Annual List and Summary a certificate signed by a director or the secretary that the company has not, since the date of the last return, issued any invitation to the public to subscribe for shares or debentures. If the number of members exceed fifty, it must also send a certificate that the excess consists of employees and past employees of the company. Share warrants should be prohibited in the articles, as it is necessary that the number of shareholders be kept within the limit mentioned.

GUARANTEE COMPANIES

Companies that are formed for the promotion or protection of special interests, e.g., non-trading institutions and many professional societies, are often formed as "guarantee" companies. It is possible for other companies so to be formed, but it is very unlikely that they will be, as from the trading aspect there is no advantage. If the company is formed with no capital, as it may be, obviously it could not carry on business. On the other hand, if it were formed as a guarantee company with a share capital, the members would undertake a double liability, namely, for the amount unpaid on their shares and for the amount of the guarantee.

Apart from the addition of the guarantee clause to the Memorandum referred to on page 256, the formation and carrying on of the company will be similar to that of a company limited by shares. But companies which are formed for the promotion of art, science, etc., and which do not propose to pay dividends, may register a name without the word "Limited," subject to

fulfilling certain conditions and to the concurrence of the Board of Trade.

In registering a guarantee company for non-trading business, the company obtains an indisputable claim to its registered name, which is always legally protected.

WINDING-UP

A company may come to an end in four ways—

(1) Compulsory winding-up by the Court;
(2) Voluntary winding-up;
(3) Winding-up under the Supervision of the Court;
(4) By having its name struck off the Register by the Registrar.

The company need not necessarily be insolvent in order to wind-up. There are many contingencies which might make it desirable, e.g., a desire to amalgamate with another company or to reconstruct itself. The striking off of the company's name from the register is a special matter which need not be further considered here.

The question where winding-up proceedings may be taken depends on the amount of the paid-up capital and the situation of the registered office. If the capital paid up, or credited as paid up, does not exceed £10,000, proceedings may be taken in the County Court of the district in which the registered office is situated. Certain County Courts, however, have been excluded from such jurisdiction, and these include the Metropolitan County Courts. If the paid-up capital exceeds £10,000, or if it is less than this and the registered office is within the Metropolitan area, proceedings must be taken in the High Court, except where the registered office is within the jurisdiction of the Chancery Courts of the Counties Palatine of Lancaster and Durham.

In every case of winding-up, a liquidator or liquidators must be appointed to administer the company's property and distribute the assets, first among the creditors and then among the shareholders, according to their rights.

It is provided by Section 223 of the Act that where a company has been dissolved, an application may be made to the court within two years of the date of dissolution, and, if sufficient reason is given, the order for dissolution may be rescinded.

COMPULSORY WINDING-UP

Grounds for Compulsory Winding-up.

A company may be wound up by the Court for the following reasons—

(1) When the company has passed a *special resolution* to that effect;
(2) If *default* is made in filing the statutory report or in holding the statutory meeting;
(3) If the company does not *commence business within a year* from its incorporation, or suspends its business for a year;
(4) When the number of members is *reduced below seven* (or two in the case of a private company);
(5) If the company is *unable to pay its debts*;
(6) If the Court is of opinion that it is just and equitable.

Cases in which a Company is deemed to be unable to pay its debts.

A company is deemed to be unable to pay its debts when—

(1) Any creditor whose debt amounts to £50 has served a demand requiring the company to pay, and the company has not within three weeks either paid, secured or compounded the amount;
(2) If in England or Ireland, execution on a judgment decree is returned unsatisfied;
(3) If in Scotland, the induciæ of a charge for payment on an extract decree or an extract registered bond, or an extract registered protest, have expired without payment being made;
(4) If it is proved to the satisfaction of the Court that the company cannot pay its debts; but the court must take into account contingent liabilities and assets of the company.

How Compulsory Winding-up is initiated.

This form of winding-up is commenced by a petition to the Court, made either by a contributory or a creditor. If an order is then made to wind-up compulsorily, the winding-up dates from the date of the presentation of the petition, except for purposes of preferential payments, in which case it dates from the order. Until a liquidator is appointed the Official Receiver acts as liquidator. The business of the company is put an end to, except for purposes of a beneficial winding-up.

One of the directors and the secretary must make out and submit to the Official Receiver, within fourteen days, a statement verified by affidavit showing the assets, debts and liabilities of the company, together with a list of creditors and their securities. After receiving this statement (known as the "statement of affairs"), the Official Receiver reports to the court as to the

assets and liabilities, the causes of the failure, and whether any inquiry is desirable.

Liquidator.

Meetings of the Company and also of the creditors are then held at which it is decided whether the Official Receiver shall act as liquidator, or whether another person shall be appointed in his place. If the latter, a " Committee of Inspection " is often appointed to assist or control the liquidator. This committee may consist of a certain number of contributories and creditors or other representatives. If the Official Receiver continues to act as liquidator, he may apply to the court to appoint a " Special Manager " to manage the business in the interests of all parties. Every liquidator under a compulsory winding-up must keep a Record Book, a Cash Book in the form required by the Board of Trade and, if he carries on the business, a Trading Account also. The Committee of Inspection must meet at least once a month, when the Trading Account is audited by them; the Committee also audits the Cash Book once at least in every three months. The accounts are audited by the Board of Trade once every six months, and they must be submitted in the prescribed form.

The liquidator reports on the whole affairs of the company, collects debts due, disposes of the company's property and does all other acts necessary to wind up the company in an equitable manner. If the shares are not fully paid he fixes the lists of " contributories," i.e., persons who are liable to contribute to the assets of the company on its being wound up, as follows—

(1) The " A list " consists of present members of the company; and

(2) The " B list " consists of past members, who have ceased to be members within a year of the commencement of winding-up.

If the transferee of the shares of a person on the " B list " is not able to pay the calls made, then the " B " contributory must pay, but only to the extent of any debts contracted before he ceased to be a member.

When all the available funds have been collected, and the liquidator has paid the incidental costs of the winding-up, he proceeds to distribute any residue.

Distribution of Assets.

Where the assets are insufficient for the payment of the company's debts, the same rules prevail as are in force under the Law of Bankruptcy as to (*a*) the respective rights of secured

and unsecured creditors, (*b*) as to debts provable, and (*c*) as to the valuation of annuities and future and contingent liabilities. (*q*) But in cases where the security covered by debentures is only a Floating Charge, certain unsecured debts are paid before the debenture holders.

Pre-preferential Debts.

These consist of debts having priority over the preferential debts as enumerated below, and include the costs of the winding-up and any debts due to the Crown, e.g., Income Tax.

Preferential Payments.

The following are preferential payments on compulsory winding-up which all rank equally—

(1) Rates and taxes due and payable within the twelve months prior to the commencement of winding-up;
(2) Wages or salaries of clerks or servants for services rendered during the preceding four months, not exceeding £50;
(3) Wages of workmen for not more than two months, not exceeding £25;
(4) Any compensation due to an employee under the Workmen's Compensation Acts, up to £100, increased temporarily to £125 in 1917, and to £175 in 1919.
(5) Contributions under the National Insurance Acts, 1911–1921, and under the Unemployment Insurance Act, 1921.

The above preferential payments have priority over a landlord's right of distraint, if exercised within three months before the date of the winding-up order, and such items are a first charge on the goods distrained or the proceeds of their sale. It should be noted, too, that a landlord has no right of distraint after the commencement of the winding-up of a company, therein differing from proceedings under bankruptcy.

Then follow the other unsecured creditors *pari passu* (that is, in equal proportions) save that, if there are any debts on which a rate of interest is paid varying with the profits of the business, they are postponed until all other debts are paid in full.

Provable Debts.

Debts which may be proved include all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages.

(*q*) See *post*, pp. 317 *et seq.*

When all the above matters have been satisfactorily arranged, the liquidator makes a report thereon to the Board of Trade and is released. An order is then made that the company is dissolved.

VOLUNTARY WINDING-UP

Causes and Method of Voluntary Winding-up.

A company may be wound up voluntarily in three different ways—

(1) When the period fixed for its duration has come to an end, or the event has happened upon the occurrence of which it is to be wound up, and the company, in either case, has in general meeting passed an *Ordinary resolution* to wind up. A company can only be wound up under this method where it is bound to cease by the terms of its regulations.

(2) When the company has (for any cause whatever, even if it is flourishing) passed a *Special resolution* to that effect.

(3) When it has passed an *Extraordinary resolution* that it cannot, by reason of its liabilities, carry on its business, and that it is expedient that the company be wound up. The notice calling the meeting must specify the reason for the proposed winding-up.

A voluntary winding-up dates from the passing of the resolution or, if a special resolution, from the date of the confirmatory resolution. In cases (2) and (3) above, notice of the resolution must be advertised in the *London Gazette*.

Effects of Voluntary Winding-up.

The effects of such a winding-up are—

(1) The company ceases to carry on its business except so far as may be required for the beneficial winding-up, but the corporate state and powers of the company continue.

(2) Transfers of shares (unless sanctioned by the liquidator) and alterations in status of members are void.

(3) The property must be applied for the benefit first of the creditors, and then among the members according to their rights.

Appointment of Liquidator.

A liquidator is appointed by the company in general meeting, and the powers of the directors cease unless continued by sanction

of the general meeting or the liquidator. The liquidator must, within seven days, call a meeting of creditors, to be held within twenty-one days after his appointment. At this meeting the creditors determine whether they shall apply to the court for the appointment of a liquidator to act jointly with or in the place of the Company's liquidator ; or for a committee of inspection.

The voluntary liquidator can, without leave of the court, exercise all the powers possessed by a liquidator appointed by the court.

Arrangements by a company with its creditors are binding under certain conditions, subject to an appeal to the court.

A creditor may petition for a winding-up by the court, although a voluntary winding-up has commenced, but the court will not usually make such an order unless the creditor's rights are prejudiced by the voluntary winding-up, or unless the general body of creditors desire such an order.

The winding-up cannot be concluded as long as any assets remain in the hands of the liquidator. If any assets should remain undistributed, they must be paid into the Companies Liquidation Account at the Bank of England. When the affairs of the Company have been finally wound up, the liquidator submits his final statement of accounts to a general meeting, of which notice must be given to the Registrar. This meeting is known as the " Final Meeting." After three months from the date of this meeting the company is deemed to be dissolved, unless for any reason it has become necessary to continue its existence, in which case an order may be made either deferring the date of dissolution or declaring the dissolution void.

WINDING-UP UNDER SUPERVISION OF THE COURT

After the commencement of a voluntary winding-up, the court may order that such winding-up shall proceed under the supervision of the court, but only if commenced by a special or extraordinary resolution. The court has discretion as to what order it makes; the effect usually is that the liquidator exercises all his powers, as mentioned previously, but subject to such restrictions as the court directs.

COMPANIES (FOREIGN INTERESTS) ACT, 1917

This Act was passed in order to restrict foreign interests in English companies, and to prevent a company which restricts any foreign interest from succeeding in ridding itself of the restriction on its membership. It prohibits any

alteration of Articles of Association or Regulations which restrict foreign interests in companies, without the consent of the Board of Trade. Further, it enacts that no resolution for the winding-up of a company having such a provision in its regulations shall be of effect unless authorized or ratified by the Board of Trade; and that the court which has jurisdiction to wind-up a company may in its discretion refuse a winding-up order, and the Board of Trade or the court shall be guided by the consideration whether the winding-up is *bonâ fide* with a view to the discontinuance of the undertaking, or is with a view to continue it free from any restrictions or limitations on the proportion or amount of the capital, or the voting power, or of the control upon the board of the company which may be held or exercised by or on behalf of aliens.

Apart from the provisions of the Act, an alien may become a member of an English incorporated company, but it was held in *Robson* v. *Premier Oil and Pipe Line Co.* (1915) that during the continuance of a state of war an alien enemy (*r*) cannot vote in respect of any shares he holds in an English company.

(*r*) See *ante*, pp. 36–7.

CHAPTER 14

LAW OF BANKRUPTCY

Reference should also be made to the following—
APPENDIX H.—Bankruptcy Act, 1914, page 400.
APPENDIX I.—Deeds of Arrangement Act, 1914, page 469.

Where a person cannot pay his debts, and is so hopelessly involved that it seems unlikely that he will be able to straighten his affairs and meet his liabilities, there is a process, known as Bankruptcy, by which the State assumes control of his affairs, takes possession of his property and pays his creditors to the extent that the property permits. When this has been done, and if he has acted honestly, the debtor is released from further liability (with some exceptions mentioned hereafter) in respect of his past debts and obligations.

Prior to 1861, only traders were allowed to become bankrupt, but since that date all classes of persons are able to avail themselves of the advantages (and stigma) of bankruptcy. There were many statutes in force, the first dating from the time of Henry VIII ; but the law of bankruptcy has now, with a few exceptions, been consolidated by the Bankruptcy Act, 1914, and the rules made thereunder now in force in relation to bankruptcy practice and known as the Bankruptcy Rules, 1915. Where referred to herein, they will be termed " the Act " and " the Rules " respectively.

Who may be made Bankrupt.

Infants.—If the debt on which it is sought to found the bankruptcy was incurred in respect of necessaries, or is a judgment debt arising out of an action in tort, it is probable that an infant may be made bankrupt, but not by any means certain ; and it is still a doubtful point. But, if an infant is a member of a partnership firm which is made bankrupt, the whole of the partnership assets, including his share, will be available for dis-

tribution to the joint creditors, although his separate estate will not be touched, and he will be excluded from the proceedings in bankruptcy.

Married Women.—If a married woman carries on a trade or business, whether separately from her husband or not, she may be made bankrupt and, if so, the court may even attach any income which she was "restrained from anticipating." (*s*) Unless, however, she is engaged in trade or business, she cannot be made bankrupt, even if she is possessed of separate property. The husband cannot prove in his wife's bankruptcy, or the wife in the husband's bankruptcy, against other creditors for value. It was held in *In re A Debtor* (1898) that, where an unmarried woman, who had had a bankruptcy petition presented against her, married during an adjournment, she was not liable to further bankruptcy proceedings.

Aliens.—An alien is equally amenable with a British subject to the bankruptcy law, provided—

(1) He is domiciled in England, or
(2) He has ordinarily resided in, or had a dwelling house or place of business in England within a year of the presentation of the petition, or
(3) He has carried on business in England, personally or by an agent or manager or is, or within the said period has been, a member of a firm which has carried on business in England by means of a partner or partners or an agent or manager.

Lunatics.—A lunatic may be adjudged bankrupt with the consent of his committee or the court, or, probably, if he commits an act of bankruptcy during a lucid interval.

Convicts.—A convict may, at any time, be made a bankrupt.

Partnerships.—A partnership, including a Limited Partnership, may be made bankrupt ; but not a combination of persons registered under any of the Companies Acts.

Joint Stock Companies.—Companies registered under the Companies Acts cannot be made bankrupt. The procedure in such cases is Winding-up.

Deceased Persons.—A deceased person cannot be adjudicated bankrupt, but his estate may be administered in bankruptcy. Should a debtor die after presentation of a petition against him, the proceedings will be continued as if he were alive, unless the court should otherwise direct.

(*s*) See *ante*, p. 35.

Procedure.

No person can be made a bankrupt until a bankruptcy petition has been presented either by the debtor himself or by a creditor, and a Receiving Order made. If the debtor has resided, or carried on business, within the London bankruptcy district for the greater part of the six months immediately preceding the presentation of the petition, or for a longer period during those six months than in the district of any County Court, or is not resident in England, or if the petitioning creditor is unable to ascertain the residence of the debtor, the petition must be presented to the High Court. In any other case the petition must be presented to the County Court for the district in which the debtor has resided or carried on business for the longest period during the six months immediately preceding the presentation of the petition. By Rule 147, preference is to be given to his business over his residential district.

Acts of Bankruptcy.

A petition cannot be presented unless the debtor has committed an " act of bankruptcy," which is one of the various acts on which a bankruptcy petition may be founded. The following are the acts of bankruptcy as set out in Section 1 of the Act—

(1) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally ;

(2) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property, or of any part thereof ;

(3) If in England or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt ;

(4) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house ;

(5) If execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days :

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time

elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days ;

(6) If he files in the court a declaration of his inability to pay his debts, or presents a bankruptcy petition against himself ;

(7) If a creditor has obtained a final judgment or final order (i.e., a decree of a court) against him for any amount, and, execution thereon not having been stayed, has served on him in England, or, by leave of the court, elsewhere, a bankruptcy notice under the Act, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counter claim, set-off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained :

For the purpose of this paragraph and of Section 2 of the Act (i.e., dealing with Bankruptcy Notices) any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgment or final order ;

(8) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

(9) An order of a court under Section 107 (4) of the Act. (*t*)

In (1) above the assignment or conveyance referred to is of all the debtor's property to a trustee who is to represent all the creditors. An assignment to one or more particular creditors, or for the benefit of a particular creditor or creditors, is not an act of bankruptcy under this head.

Under (2) and (3) the conveyance or transfer referred to is one that is at the time fraudulent and, therefore, this is the reason for its constituting an act of bankruptcy. If made for valuable consideration it is valid, and a *bonâ fide* voluntary conveyance or gift will not be sufficient ground for the foundation

(*t*) See *post*, p. 443.

of a petition, although the conveyance itself may be set aside. Any fraudulent preference made within three months of the presentation of the bankruptcy petition may be set aside.

In the case of (4) it is the *intention* that has effect. If there is no intention to defeat or delay creditors, the doing of the acts referred to will not amount to an act of bankruptcy. But the question of intent will be inferred from the facts of the case. So, in *In re Finney* (1874), it was held that where a debtor knows that, if he goes abroad, a necessary consequence will be to defeat or delay his creditors, he has acted with such intention. To " keep house " is to deny access to creditors either by refusing admittance or by withdrawing to a more retired part of the house.

The " bankruptcy notice " mentioned under (7) requires the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and states the consequences of non-compliance with the notice.

The notice of suspension or intended suspension of payment referred to under (8) must be given deliberately, but it need not be in writing. The point to consider is what was the debtor's intention. Thus, in *Crook* v. *Morley* (1891), the debtor sent a notice to the effect that he was unable to meet his engagement and he invited his creditors to meet him at a specified place and time in order that he might submit a statement of his position. This was held to be a sufficient notice. But in *Clough* v. *Samuel* (1905), where a stockbroker told his creditors that he should have a difficulty in paying at the approaching settlement, and suggesting that they closed their accounts with him, it was held not to be sufficient notice of suspension or intended suspension of payment.

The Petition.

Bankruptcy proceedings are commenced by the presentation of a petition asking the court to make an order, called a *Receiving Order*, against the debtor. The petition may be presented by the debtor himself or by a creditor or creditors. In lieu of a petition, it is provided by Section 107 (4) of the Act that " Where, under Section 5 of the Debtors Act, 1869, application is made by a judgment creditor to a court having bankruptcy jurisdiction for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor. In such

case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made."

Conditions under which Petition may be presented.—A creditor is not entitled to present a bankruptcy petition against a debtor unless—

(1) The debt owing to him or, if two or more creditors join in the petition, the aggregate amount owing to the petitioning creditors, amounts to fifty pounds.

(2) The debt is a liquidated sum, payable either immediately or at some certain future time.

(3) The act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition.

(4) The debtor is domiciled in England, or within a year before the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business in England or (except in the case of a person domiciled in Scotland or Ireland or a firm or partnership having its principal place of business in Scotland or Ireland) has carried on business in England, personally or by means of an agent or manager, or (except as aforesaid) is or within the said period has been a member of a firm or partnership of persons which has carried on business in England by means of a partner or partners, or an agent or manager.

Where a deed of arrangement has been executed, a creditor is not entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases where he is prohibited from so doing by the law for the time being in force relating to deeds of arrangement.

Petition by Secured Creditor.—If the petitioning creditor is a secured creditor, he must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated, in the same manner as if he were an unsecured creditor. The creditor's petition must be verified by affidavit of the creditor or some person on his behalf having knowledge of the facts.

Debtor's Petition.—If the debtor is the petitioner his petition must allege that he is unable to pay his debts, and the presenta-

tion thereof is deemed an act of bankruptcy without the previous filing by him of any declaration of inability to pay his debts. As a rule, in such case, the court will make a receiving order forthwith ; but the court is not bound to do so, and, in fact, the court will refuse to do so where, as in the case of *In re Betts* (1901), the debtor repeatedly presents petitions against himself for the purpose of avoiding the effects of committal orders made against him. It was held in the case cited that the presentation was an abuse of the process of the court and that no receiving order should be made. On the other hand, in *In re Hancock* (1894), it was held that, under certain circumstances, it is not improper for a debtor to relieve himself from such pressure by seeking the protection afforded by bankruptcy.

Where two or more petitions are presented against the same debtor or against joint debtors, the court may consolidate the proceedings on such terms as it thinks fit ; and, in cases where the petitioner does not proceed with due diligence, the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by the Act in the case of the petitioning creditor.

Upon the presentation of the petition, the person petitioning must pay a stamp duty of £5 and make a deposit as required under the Rules. Should the assets be insufficient, he will be unable to recover the costs incurred by him up to and including the time of the making of the receiving order.

Once a petition has been presented, whether by the debtor or a creditor, it cannot be withdrawn without leave of the court.

The Receiving Order.

As mentioned above, an order is usually made at once on the petition of the debtor. In the case of the presentation of the petition by a creditor, however, it will not be made until after the hearing. The petition is heard after an interval of at least eight days from the date of service on the debtor, and the creditor must prove, by affidavit or otherwise, the existence of the debt, the service of the petition, and an act of bankruptcy. If the court is satisfied, and the debtor is unable to urge any valid reason against it, a receiving order is made.

The effect of the order is to constitute the Official Receiver, an officer of the Board of Trade, receiver of the property of the debtor, and to deprive the creditors of all remedies against the person or property of the debtor unless they are (*a*) secured creditors, (*b*) creditors whose debts are not provable in bankruptcy, or (*c*) to some extent only, the landlord.

On the presentation of the petition and before the making

of a receiving order, if it is shown to be necessary for the protection of the estate, the official receiver may be appointed *Interim Receiver*; and any proceedings, i.e., action, execution or other legal process, against the debtor may be stayed by the court. If the official receiver is satisfied that it is in the interests of the creditors generally, or that the nature of the business demands it, he may appoint a *Special Manager* to act until a trustee is appointed, with such powers as may be entrusted to him by the official receiver.

Notice of every receiving order is advertised in the *London Gazette* and in a local paper.

Orders in bankruptcy may be rescinded or varied by the court for cause shown, and they may be appealed against as provided in Section 108 of the Act, and, in particular, the order will be rescinded where the petition has been presented in circumstances which amount to an abuse of the process of the court, e.g., where a debtor repeatedly presents petitions against himself for the purpose of avoiding the effects of orders for his committal.

Arrest of Debtor.

The court may cause a debtor to be arrested and any books, papers, money or goods in his possession seized—

(1) If, after a bankruptcy notice has been issued, or a petition presented, it appears to the court that there is a probability that he has absconded, or is about to abscond, with a view of avoiding payment, or of avoiding service of or appearance to any such petition, or of avoiding examination, or of otherwise avoiding, delaying or embarrassing bankruptcy against him.

(2) If, after presentation of a bankruptcy petition, it appears that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver, or that he has concealed or is about to conceal or destroy any goods, books or documents.

(3) If, after service of a bankruptcy petition, he removes any goods in his possession above the value of five pounds without the leave of the trustee or official receiver.

(4) If, without good cause shown, he fails to attend any examination ordered by the court.

It is essential, however, that the debtor must be served with such bankruptcy notice before or at the time of his arrest.

The Official Receiver.

The official receiver is an official appointed for a given district by the Board of Trade, his principal duty being to receive all the property of the bankrupt *until a trustee is appointed*, and he acts whenever there is a vacancy in the trusteeship. His other duties include—

(1) Reporting on the conduct of the debtor in his affairs, for the guidance of the court.
(2) Taking part in the public examination of the debtor.
(3) Seeing that the proper statement of affairs is submitted.
(4) Presiding at the first meeting of creditors.
(5) Issuing the proper proxy forms.
(6) Issuing the proper advertisements and notices.
(7) Demanding the attendance of the debtor for the purpose of obtaining his assistance.
(8) Reporting to the creditors on any proposal made by the debtor.
(9) He may appoint a "special manager" to manage the business until a trustee is appointed, if he has satisfied himself that it would be to the advantage of the creditors that the business should be continued.

Board of Trade.

Where mentioned herein, the Board of Trade means the Bankruptcy Department of the Board of Trade. This is a Government department formed for the purpose of supervising bankruptcy business. The Board of Trade has certain permanent officials for the conduct of its functions, in particular the Official Receiver referred to above. It sanctions the appointment of, and superintends, Trustees, and it audits their accounts, this audit being in addition to the audit by the Committee of Inspection referred to hereafter. In fact, the Board of Trade supervises the whole of the bankruptcy proceedings from beginning to end. When the receiving order is made and the debtor's property is held by the Official Receiver, it is of course held by the Board of Trade; when the Trustee is appointed and the property vested in him, the Board controls his functions and sees that the proceeds are properly applied; when the bankrupt applies for his discharge the Board, by its officer, reports on the debtor's conduct and affairs, and this report practically determines whether or not the discharge shall be granted.

"Relation back."

Section 37 of the Act provides that the bankruptcy shall relate back to and commence at the time of the commission of the

act of bankruptcy upon which the order is made. The usual rule is that a judicial act operates from the *earliest moment* of the day upon which it is performed, but it has been held that in relating back in connection with bankruptcy, the time of commencement of a bankruptcy is the *actual moment* of the day when the first act of bankruptcy was committed.

The Trustee in Bankruptcy is entitled to all goods and rights possessed by the bankrupt at the date of " relation back," and, if there are several acts of bankruptcy which may be relied upon, the date is pushed backward to include the first available act of bankruptcy committed within three months next before the presentation of the petition. Such date is known as the " Commencement of the Bankruptcy," and is important as fixing the following, viz.—

(1) The Trustee's title to the property of the bankrupt
(2) The amount recoverable by the landlord by distraint, and
(3) The rights of execution creditors against those of ordinary creditors.

Meetings of Creditors.

The First Schedule to the Act lays down the procedure for meetings of creditors, and this may be summarized as follows—

First Meeting of Creditors.—The first meeting of creditors must be summoned for a day not later than fourteen days after the date of the receiving order, and at least six days' notice must be given by advertisement in the *London Gazette* and in a local paper. This meeting is held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, or whether it is expedient that the debtor should be adjudged bankrupt, and generally as to the mode of dealing with his property.

It should be borne in mind that the debtor is not adjudicated bankrupt by the making of the receiving order, which simply hands his property to the receiver until a decision is arrived at.

Voting at Meetings of Creditors.—No person is entitled to vote at any meeting of creditors unless he has duly proved a debt provable in bankruptcy and the proof has been duly lodged in accordance with the Rules. A creditor is not entitled to vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

For the purposes of voting, a secured creditor must, unless he surrender his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it ; and he is entitled to vote only in respect of the balance due to him (if any) after deducting the value of his security.

If he votes in respect of his whole debt he is deemed to have surrendered his security, unless the court on application is satisfied that the omission to value the security had arisen from inadvertence. And a creditor must not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof and, for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof. The trustee may, within twenty-eight days of the vote, buy the security at the estimated value plus twenty per cent.

If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

Chairmen of Meetings.—The Official Receiver, or his nominee, acts as chairman at the first meeting of creditors; but, at any subsequent meeting, the creditors choose their own chairman. The chairman has power to admit or reject a proof for the purpose of voting, but his decision is subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he must mark the proof as objected to and allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

Proxies.—A creditor may vote either in person or by proxy. Proxies are of two kinds, general and special. The forms are issued by the official receiver or by the trustee, as the case may be. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy must state the relation in which the person appointed thereunder stands to the creditor.

A special proxy may be given to any person to vote at any specified meeting or adjournment thereof, on all or any of the following matters—

(1) For or against any specified proposal for a composition or scheme of arrangement.

(2) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as a member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection.

(3) On all questions relating to any matter other than those

above referred to, arising at any specified meeting or adjournment thereof.

A proxy may not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used. The official receiver of the estate may be appointed by a creditor as his general or special proxy.

Adjournment of Meetings.—The meeting may be adjourned by the chairman, with the consent of those present, from time to time and from place to place. But it is not competent for a meeting to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless at least three creditors are present or represented. If the creditors do not number, in all, more than three, they must all be present or represented.

Debtor's Statement of Affairs.

If the receiving order has been made on the petition of the debtor himself, he must within three days from the date of the order, or, if a creditor has petitioned, then within seven days of the order, prepare and submit to the official receiver a statement of and in relation to his affairs, verified by affidavit, including particulars of his assets and liabilities, the names of his creditors, and particulars of the securities held by them.

The official receiver sends to each creditor mentioned in the statement a notice of the time and place of the first meeting of creditors and a summary of the debtor's statement of affairs.

The court may, on the application of the official receiver or trustee, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

Public Examination.

The debtor must undergo a public examination in open court in regard to his conduct, dealings and property. The official receiver fixes the date as soon as possible after the delivery of the Statement of Affairs and he gives notice to the debtor and creditors and publishes it in the *London Gazette* and in a local paper. The debtor is examined on oath, and notes of his examination are taken down in writing and, after being read over to or by the debtor, are signed by him and can be used as evidence

against him. Any creditor who has tendered a proof, or his representative, may question the debtor concerning his affairs and the causes of his failure. The Official Receiver takes part, and if there should be a trustee appointed before the conclusion of the examination, he also may take part therein. The examination may be adjourned by the court and, if the debtor should prove contumacious, it may be adjourned *sine die*, in which case, under Rule 195, the debtor must bear the expense of making a fresh appointment and of advertising the date.

It is further provided by the Rules that if the debtor should fail to attend his examination a warrant will be issued for his arrest.

Any of the parties, viz., official receiver, trustee, creditors and debtor may employ solicitors or counsel to take part in the public examination. When the court is of opinion that the debtor's affairs have been sufficiently investigated it may, by order, declare the examination concluded ; but such order may not be made until after the day appointed for the first meeting of creditors.

If the debtor should be a lunatic, or suffer from any such affliction or disability as, in the opinion of the court, would make him unfit to attend his public examination, the court may make an order dispensing with such examination, or directing that he be examined on such terms, in such manner, and at such place as seems to the court to be expedient.

Composition or Scheme of Arrangement.

The debtor may propose a Composition in satisfaction of his debts, or a Scheme of Arrangement of his affairs and, if he does so, any such proposal must be submitted within four days of the delivery of his statement of affairs, or within such further time as the official receiver may fix. If the creditors who have proved their debts resolve by a majority in numbers and a three-fourths majority in value to accept the composition offered, or to adopt the scheme of arrangement suggested, and the court should approve the proposal, there is no need for the debtor to be adjudged bankrupt : otherwise the creditors may resolve by a majority in value that he shall be. The court will not assent to the scheme unless it appears that the proposals are reasonable and likely to benefit the general body of creditors, and in cases where the court would be bound to refuse the bankrupt his discharge, it must refuse to sanction the scheme.

Where the scheme is consented to by the court, the receiving order is discharged and the debtor is in the same position, providing he carries out the terms of the scheme, as if the bankruptcy had been carried through and he had obtained his discharge.

It should be borne in mind that such a composition as this is not the same as an arrangement with creditors made under the Deeds of Arrangement Act, 1914. (*u*) The effect of the latter is that only those creditors who assented to the scheme are bound, and the debtor is not released from the claims of others, whereas in the former case he is released from the claims of all.

Adjudication.

The court will adjudge the debtor bankrupt—

(1) If by resolution of a majority in value of the creditors they resolve that he be adjudged bankrupt.
(2) If they pass no resolution.
(3) If they do not meet.
(4) If a composition or scheme of arrangement is not approved within fourteen days after the conclusion of the examination.
(5) At the debtor's own request at the time of making the receiving order.

On adjudication, the property of the bankrupt becomes divisible among his creditors, and is vested in the trustee (referred to hereinafter) (*v*) for that purpose. Notice of every such order is advertised in the *London Gazette* and in a local paper, and the date of the order is deemed to be the date of adjudication.

Annulment of Adjudication.—The court may annul the adjudication—

(1) When in the opinion of the court the debtor ought not to have been adjudged bankrupt.
(2) Where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full. This is at the discretion of the court, and depends on the debtor's conduct.
(3) If the creditors at any time after the adjudication by a majority in number and three-fourths majority in value resolve to accept a composition or a scheme of arrangement.

The Trustee.

Where a debtor is adjudged bankrupt, or the creditors have resolved that he shall be, the creditors may, by ordinary resolution, appoint a person, whether creditor or not, to fill the office of trustee of the property of the bankrupt, or they may resolve to leave the appointment to the committee of inspection, referred to hereinafter. (*w*) The person so appointed must give security

(*u*) See *post*, p. 469. (*v*) See *post*, pp. 304–308.
(*w*) See *post*, p. 308.

to the satisfaction of the Board of Trade, which issues a certificate that his appointment has been duly made, and the Board approves the appointment on other grounds also, that is to say, the certificate will *not* be issued where—

(1) The trustee was not elected *bonâ fide*;
(2) He is unfit to act, e.g., where he has in any previous case been removed for misconduct;
(3) He is likely not to prove impartial owing to his connection with the bankrupt or any creditor.

The whole of the debtor's property at once vests, automatically, in the trustee. There may be more than one trustee, but it is not usual. If the creditors do not appoint a trustee within four weeks of the adjudication, or if negotiations for a composition or scheme are pending at the expiration of the four weeks, then, within seven days of the breakdown of the negotiations, the Board of Trade may appoint a person to act as trustee. The creditors or the committee of inspection may, at any subsequent time, appoint a trustee and, on such person being certified by the Board of Trade, he takes the place of the trustee appointed by the Board.

Official Receiver as Trustee.—The official receiver acts as trustee in the following cases—

(1) Before the appointment of a trustee, and during any vacancy in the trusteeship.
(2) Where the estate is not likely to exceed three hundred pounds in value.
(3) Where the estate to be administered is that of a deceased insolvent.

Termination of Appointment of Trustee.—The appointment of trustee may be determined as follows—

(1) If he wishes to resign. A meeting of the creditors must be called and seven days' notice thereof given to the official receiver, and it then rests with the meeting as to whether his resignation be accepted or refused.
(2) If he is removed. This may be done—
    (*a*) By ordinary resolution by the creditors at a meeting called, at the request of one-sixth in value of the creditors, by a member of the committee of inspection or by the official receiver.
    (*b*) By the Board of Trade.
        (i) If the Board are of opinion that he is guilty of misconduct or fails to perform his duties, or

(ii) That his trusteeship is being needlessly protracted without probable advantage to the creditors, or

(iii) That by reason of lunacy or continued sickness or absence he is incapable of performing his duties, or

(iv) That his connection with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act impartially.

(v) Where in any other matter he has been removed from office for misconduct, the Board may remove him from the trusteeship; but, if the creditors by ordinary resolution disapprove of the removal, he or they may appeal to the High Court.

(vi) If he fails to keep up his security.

(3) If a receiving order is made against him.

(4) When he has become *functus officio*, that is, has fulfilled his functions as trustee, by reason of the estate being wound up or some scheme of arrangement having been accepted by the creditors.

(5) If he has been released, without having previously resigned or having been removed from office.

Release of Trustee.—The trustee may apply for a release when he has ceased to act by reason of a composition having been approved, or when he has resigned or been removed from office. The Board of Trade must, on his application, cause a report on his accounts to be prepared and, on his complying with all the requirements of the Board, the Board must take into consideration the report, and any objection by any creditor or person interested against his release, and must either grant or withhold the release accordingly, subject, however, to an appeal to the High Court. The release when granted frees the trustees from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order of release may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

Duties of the Trustee.

The trustee must, as soon as may be, take possession of all documents and property of the bankrupt, realize the property to the best advantage, and, as speedily as possible, distribute

the proceeds among the creditors in the prescribed order of preference. He must obey any orders of the Board of Trade, and must have regard to any directions that may be given by resolution of the creditors at a general meeting, or by the committee of inspection. If the directions given by the two latter bodies should conflict, those of the general meeting of creditors override those given by the committee. He must make no profit in any way out of the estate beyond the remuneration allowed him by the creditors or committee of inspection. The trustee must keep proper books and accurate accounts of all transactions, and must pay all money received by him into the Bankruptcy Estates Account at the Bank of England.

The Board of Trade may authorize payment into a local bank; but under no circumstances may he pay money received by him as trustee into his private banking account. The accounts are audited, from time to time, by the committee of inspection and by the Board of Trade.

Powers of the Trustee.—The trustee may exercise the right of transferor of stock, shares in ships, shares in companies, and choses in action generally in like manner as the bankrupt might have done.

He has absolute authority to—

(1) Sell all or any part of the property of the bankrupt by public auction or privately.
(2) Give receipts for any money received by him; these act as an effectual discharge.
(3) Prove, claim and draw a dividend in respect of any debt due to the bankrupt.
(4) Exercise any powers given him by the Act, and execute any instruments necessary for their due fulfilment.
(5) If the bankrupt is tenant-in-tail (i.e., if he is the tenant for life in an entailed estate which must descend to his heir), deal with it in the same manner as the bankrupt might have done.

With the permission of the Committee of Inspection, he can do the following things—

(1) Carry on the business so far as may be necessary for the beneficial winding up.
(2) Bring or defend actions relating to the property.
(3) Employ a solicitor or agent to take any proceedings or do any business.
(4) Accept as consideration for the sale of any property a sum of money payable at a future time, subject to security as authorized by the committee.

(5) Mortgage or pledge any of the property to raise money for the payment of the debts.
(6) Refer disputes to arbitration, and compromise any claim.
(7) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature cannot be readily or advantageously sold.
(8) Appoint the bankrupt himself to superintend the management of the property or to carry on the trade for the benefit of the creditors.
(9) Make such allowances as he may think just to the bankrupt out of his property, for the support of the bankrupt and his family, or in consideration of his services if he is engaged to assist in winding up the estate.

No general permission may be given to do the above acts, special permission must be given to do every particular act.

Committee of Inspection.

It is not essential that a committee of inspection should be appointed; but the creditors qualified to vote may, at any meeting by resolution, appoint a committee for the purpose of assisting the trustee or of superintending the administration of the bankrupt's property by the trustee. It must not consist of more than five or of less than three persons, being creditors, or the holders of a general proxy or general power of attorney from a creditor, or persons to whom a creditor intends to give a general proxy or power of attorney; but no member so appointed may act until the creditor has proved his debt and the proof has been admitted and the person to whom it was intended to give the proxy or power of attorney actually holds it.

The committee meets at least once a month, and the trustee or any member may call a meeting as and when he thinks necessary. It may act by a majority of the members present at a meeting, and a majority of the committee forms a quorum.

The appointment of a member of the committee terminates—

(1) If he resigns, which he may do by notice in writing delivered to the trustee.
(2) If he becomes bankrupt or compounds or arranges with his creditors.
(3) If he is absent from five consecutive meetings.
(4) If he is removed, which may be done by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.

If no committee of inspection is appointed, any act or thing

or any direction or permission authorized or required to be done or given by the committee may be done or given by the Board of Trade.

The committee supervises the performance of the duties of the trustee, and the general administration of the estate. The trustee s accounts are audited by the committee of inspection, which must see that all books, i.e., the Trading Account if the business is being continued, and the Cash Book and vouchers, are produced. The Trading Account (if any) must be audited by the Committee at least once in every month, and the Cash Book at least once in every three months, but both may of course be audited oftener if desired. On the completion of the audit, the committee signs a certificate in the books to that effect.

Realization of the Property.

The bankrupt's property which is available for the payment of his debts includes, with certain exceptions, all property to which he has a title of any kind, and also certain property which he has already assigned and which may, under some circumstances, be recovered by the trustee. The property may, therefore, be divided into two classes, viz., Divisible Property, and Property not Divisible, in accordance with Section 38 of the Act.

Divisible Property comprises—

Property belonging to the Bankrupt.—This means all property that may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge. The property " belonging to " the bankrupt would probably be held to include the right to bring an action, both in contract and tort, where the estate is affected, but not in the case of contracts or injuries of a personal nature. It was held in *Bailey* v. *Thurston* (1903), where a bankrupt had been wrongfully dismissed from his employment after he had been adjudged bankrupt, that the right to sue for damages remained in him and was not vested in the trustee.

All transactions of a bankrupt with any person dealing with him *bonâ fide* and for value, in respect of any property, whether real or personal, acquired by him after adjudication, if completed before any intervention by the trustee, is valid against the trustee.

It was held in *In re Roberts* (1900) that the trustee has no claim against the personal earnings of the bankrupt so far as they are necessary for the maintenance of himself, his wife and family. But, by Section 51, the Act provides that where a bankrupt is an officer of the army, navy or civil service, the trustee can receive so much of the bankrupt's pay or salary as the court, with the consent of the department concerned, may

direct. And where the bankrupt is in receipt of salary or income other than as aforesaid, or is entitled to half pay, pension or any compensation granted by the Treasury, the court will, from time to time, make such order as it thinks just for the payment of the income, or any part thereof, to the trustee. Somewhat similar rules apply where the bankrupt is a beneficed clergyman.

Powers and Rights.—The trustee can exercise, and take proceedings for exercising, all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit, at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice. So that if, for example, the bankrupt has a right of disposition over property under which he can exercise it in his own favour if he wishes, he can be compelled so to exercise such power of appointment and the property will vest in the trustee.

Goods in the Bankrupt's Reputed Ownership.—All goods being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt—

(*a*) In his trade or business,

(*b*) By the consent and permission of the true owner,

(*c*) Under such circumstances that he is the reputed owner thereof are available for the creditors.

All three conditions must be fulfilled before the clause applies. It is provided, however, that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.

It is sufficient to bring goods within the doctrine of " reputed ownership " if the goods are in such a situation as to convey to the minds of those who know their situation the reputation of ownership, and the court will judge from the situation of the goods what inference as to ownership might legitimately be drawn from those who knew the facts. The whole question is one of fact ; but, even so, the doctrine may be excluded by a trade custom which ousts the inference that might otherwise be drawn, e.g., as in *Crawcour* v. *Salter* (1881), where judicial notice was taken of the common practice of hotel-keepers to hire furniture, so that hotel furniture is not in the reputed ownership of the hotel-keeper. There is a similar custom with regard to jewellers, where stock is usually held on sale or return. But the mere fact that goods are held on sale or return is not necessarily sufficient in itself to oust the doctrine of Reputed Ownership. It was held in *In re Button* (1907) that where the trustee takes goods under this section, the true owner is entitled to prove for their value.

Property assigned by Bankrupt.—In divisible property is also included property already assigned by the bankrupt, which under certain circumstances may be recovered by the trustee. This is considered under the head of *Recoverable Property.* (*x*)

PROPERTY NOT DIVISIBLE (*Excepted Articles*) comprises—

(1) Property held by the bankrupt in trust for any other person.
(2) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds.
(3) Goods in respect of which a vendor's lien and right of *stoppage in transitu* has been exercised.
(4) Moneys payable under policies of insurance.
(5) Any property or income to which the bankrupt is entitled on the condition that it is vested in another person on his bankruptcy. Such a settlement cannot be made by the bankrupt himself; it would be void.
(6) So much of the salary, pension or income of Crown servants or clergymen as cannot be acquired by the trustee as mentioned under the head of *Divisible Property.*

It should also be noted that where a married woman, who has been adjudged bankrupt, has separate property, the income of which is subject to a restraint on anticipation, (*y*) the court has power, on the application of the trustee, to order that during such time as the court may order, the whole or some part of such income be paid to the trustee for distribution amongst the creditors; but, in the exercise of such power, the court will have regard to the means of subsistence available for the woman and her children.

Protected Transactions.

By Section 45 of the Act, subject to any of the provisions of the Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments and preferences, considered hereafter, nothing shall invalidate—

(1) Any payment by the bankrupt to any of his creditors,
(2) Any payment or delivery to the bankrupt,
(3) Any conveyance or assignment by the bankrupt for valuable consideration,
(4) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration,

(*x*) See *post*, p. 312. (*y*) See *ante*, p. 35.

provided that the following conditions are complied with—

(*a*) That the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and

(*b*) That the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time *notice of any available act of bankruptcy* committed by the bankrupt before that time.

By Section 46, protection is given also to a payment of money or delivery of property made to the bankrupt or his assignee *without notice of the presentation of a petition* and before the actual date of making the receiving order.

Transactions between the bankrupt and his banker are deemed transactions for value. But if the banker ascertains that the customer is an undischarged bankrupt, unless he is satisfied that the account is for some other person, he must inform the Board of Trade or the trustee and make no further payments without an order of the court or the instructions of the trustee, unless by the expiration of a month from the date of giving the information he has received no instructions from the trustee.

Enquiry as to the Property.

The court may, on the application of the official receiver or trustee, at any time after a receiving order has been made, summon before it the debtor or his wife, or any person who is known or suspected to have in his possession any of the estate or effects belonging to the debtor, or who is supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and such persons may be required to produce any relevant documents in their possession. If any person on examination admits that he is indebted to the debtor or has any property in his possession belonging to the debtor, the court may order him to pay the amount or deliver up the property, or any part thereof, to the official receiver or trustee.

Further, the court may order that letters and telegrams addressed to the debtor shall be re-directed to the official receiver or trustee.

Recoverable Property.

In some cases and under certain circumstances property already assigned by the debtor, or otherwise not in his possession

or ownership, can be recovered by the trustee for the benefit of the creditors. Such cases are—

(1) Against Execution Creditors.
(2) Avoidance of Voluntary Settlements.
(3) General Assignment of Book Debts, unless registered.
(4) Fraudulent Preferences.

Against Execution Creditors.—By Section 40 of the Act, where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he is not allowed to retain the benefit against the trustee, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of the bankruptcy petition, or of the commission of any available act of bankruptcy by the debtor. And by Section 41, where goods are taken in execution, and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff must deliver up the goods and any money seized or received to the official receiver, but the costs of the execution are a first charge on the goods or money so delivered. Further, where, under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff must deduct his costs from the proceeds or the money paid and retain the balance for fourteen days and, if within that time, notice is served on him of a bankruptcy petition having been presented by or against the debtor and a receiving order is eventually made thereon, he must pay the balance to the official receiver or trustee, who is entitled to retain it against the execution creditor. But a person who purchases the goods in good faith under a sale by the sheriff acquires a good title to them against the trustee.

Avoidance of Voluntary Settlements.—A voluntary settlement is one which is made without valuable consideration having been given. It may be a valid settlement in every respect ; but, if made within certain periods of time before the bankruptcy, it will be void as against the trustee.

By Section 42 of the Act, a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer (i.e., mortgagee or chargee) in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to him after marriage in right of his wife, is a valid settlement and cannot be avoided by the trustee. But in any other case, if the settlor becomes bankrupt within two years of the date of the settlement, such

settlement is void against the trustee. Further, if the settlor becomes bankrupt within ten years of the date of the settlement, it is void against the trustee, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of the settlement on its execution. The section also makes similar provision as to the settlement of future-acquired property. A "settlement" includes any conveyance or transfer of property. But it was held in *In re Plummer* (1900) that if a gift of money is made to be employed in a business which is not itself settled, such gift cannot be avoided as a settlement if the money has been so employed or spent.

General Assignment of Book Debts.—Section 43 of the Act provides that where a person engaged in any trade or business makes an assignment of his existing or future book debts or any class thereof, and he is subsequently adjudicated bankrupt, the assignment is void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money. This provision does not render void any assignment of book debts due from specified debtors, or growing due under specified contracts, or any assignment of book debts included in a transfer of a business *bonâ fide* and for value, or in any assignment of assets for the benefit of creditors generally.

Fraudulent Preferences.—It is provided by Section 44 of the Act that if a person is unable to pay his debts as they become due, every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered, by any such person, in favour of any creditor, or of any person in trust for any creditor, with a view of giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months thereof, be deemed fraudulent and void as against the trustee in bankruptcy.

This rule applies only where the intention has been to prefer one creditor over the others ; and, in any case, it does not affect the rights of any person making title in good faith and for valuable consideration through or under the preferred creditor. Further, the transaction must have been voluntary, not by compulsion. For example, in *Ex parte Taylor* (1887), where the creditor

threatened legal proceedings and the debtor paid up, it was held that there was no fraudulent preference. Again, in *In re Lake* (1901), a trustee had committed a breach of trust which was known only to himself. On the eve of the bankruptcy he deposited amongst the trust papers certain securities which were his own property, together with a memorandum reciting his breach of trust and that he had deposited the securities in order to repair the wrong that he had committed. It was held that, in the circumstances, there was no view to prefer and that this was, therefore, not a fraudulent preference.

Disclaimable Property.

As opposed to property which may be recovered by the trustee, there is also certain property which he may disclaim or " wash his hands of," viz., property which would be a burden and not an advantage to the estate, such as land burdened with onerous covenants or shares with a heavy liability for uncalled capital attaching thereto. Section 54 of the Act, and the Rules thereunder, empower the trustee as follows :—Where any of the property consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable or not readily saleable by reason of its requiring the performance of any onerous act or the payment of money, the trustee may disclaim the property at any time within twelve months of the first appointment of a trustee, by writing signed by him.

If the trustee has no knowledge of the property within a month of his appointment, then he may disclaim at any time within twelve months of becoming aware of it.

Disclaiming Leases.—The trustee may not disclaim a lease without leave of the court, unless the property has not been sub-let or mortgaged, and

(1) The value is less than £20 per annum, or
(2) The estate is being administered summarily, or
(3) The lessor does not, within seven days of being served with a notice of the intention to disclaim, bring the matter before the court.

Where the property has been sub-let or mortgaged the trustee cannot disclaim without applying to the court unless, after notice has been served on the lessor or mortgagee or sub-lessee, the matter is not required by one of them to be brought before the court.

Restrictions on Disclaimer.—The trustee may not disclaim where an application has been made to him in writing by any person interested in the property requiring him to decide

whether he will disclaim or not, and he has not within twenty-eight days thereof given notice that he disclaims the property. Similarly, in the case of a contract, after such application, if the trustee does not, within twenty-eight days, disclaim the contract he will be deemed to have adopted it.

Effect of Disclaimer.—When the trustee disclaims property or contracts, such disclaimer operates to determine, as from the date of disclaimer, the rights, interest, and liabilities of the bankrupt and his property as or in respect of the property disclaimed. It also discharges the trustee from all personal liability in respect thereof as from the date the property vested in him ; but it does not, except so far as is necessary for the above purposes, affect the rights or liabilities of any other person.

Vesting Orders.—Any person having an interest in the property disclaimed may apply to the court and, at its discretion, obtain an order vesting the property in or delivery of the property to himself, or a trustee for him, on such terms as the court thinks just. But, where the property is of a leasehold nature, the court will not make a vesting order except upon the terms of making that person—

(*a*) Subject to the same liabilities and obligations as the bankrupt was subject to under the lease at the date when the bankruptcy petition was filed, or

(*b*) If the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date.

If the person interested, whether under-lessee or mortgagee, declines to accept a vesting order on such terms he will be excluded from all interest in and security upon the property.

Similar provisions apply, under Section 54 (5), to contracts. The court may, on the application of any person who is entitled to the benefit or subject to the burden of a contract with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party as to the court may seem equitable. But it was held in *Ex parte Holthausen* (1874) that where a person has purchased and paid the bankrupt for property without notice of any act of bankruptcy, the trustee is bound to convey the property to the purchaser. If, under this provision, any damages are payable under the order to any such person, he may prove for them as a debt under the bankruptcy.

Any person injured by the operation of a disclaimer is deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Secured Creditors.

A secured creditor is a creditor who holds a mortgage, charge or lien on any property of the debtor. A secured creditor, by the second Schedule to the Act, has three courses open to him—

(1) He may realize his security and prove for the balance due to him, after deducting the net amount realized.

(2) He may surrender his security and prove for his whole debt.

(3) He may state in his proof the particulars of the security, the date when it was given, and the value at which he assesses it, and is entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. Where the security is so valued, the trustee may at any time redeem it on payment to the creditor of the assessed value, unless such creditor is the petitioning creditor; or, if he is dissatisfied with the value at which it is assessed, he may require the security to be offered for sale, on such terms as may be agreed or as the court may direct. The creditor may require the trustee to elect whether he will redeem or not, and the trustee must then elect within six months. The creditor may, if he can show that he valued on a *bonâ fide* mistaken estimate, amend his valuation and proof, and rank for dividend accordingly.

The above courses, obviously, are likely to be pursued only where the security is not sufficient to meet the whole of the debt due. If it is sufficient the creditor will, of course, retain his security and not prove at all. Where the security has been assessed, the trustee has the option of purchasing the security at that assessed value, plus twenty per cent. Reference should be made to the rule in *ex parte Waring.* (*z*)

Where any goods of the debtor are held by any person by way of pledge, pawn or other security, the official receiver or trustee may, under Section 59, after giving notice of his intention, inspect the goods; and, where such notice has been given, that person is not entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption, if he thinks fit to do so.

Proof of Debts.

By Section 30 all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date

(*z*) See *post*, p. 325.

of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, are deemed to be debts provable in bankruptcy. If any debt or liability does not, by reason of being subject to any contingency, bear a certain value, an estimate should be made by the trustee of its value, and any person aggrieved by any such estimate may appeal to the court.

Debts not provable.—Certain debts are not provable, viz.,

(1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust.
(2) Debts or liabilities contracted by the debtor, subsequently to the date of an available act of bankruptcy, within the knowledge of the creditor.
(3) Debts contracted after the date of the receiving order.

Set-off.—Under Section 31, where there have been mutual credits, mutual debts or other mutual dealings between the debtor and any other person proving or claiming to prove a debt, an account must be taken of what is due in respect of such mutual dealings, and the balance only of the account can be claimed or paid respectively; but the creditor is not entitled to the benefit of any set-off where he had, at the time of giving credit to the debtor, notice of an available act of bankruptcy.

Interest on Debts.—Under the provisions of Section 66, where the debtor has agreed to pay interest on a debt, or in some cases even if not agreed, such interest may be proved for with the amount of the debt up to five per cent. per annum. Any excess of interest above five per cent. may be proved for, but will not be paid until after all the debts proved in the estate have been paid in full.

Postponement of Payment of certain Debts.—Certain debts which by Section 3 of the Partnership Act, 1890, are deferred until the claims of other creditors have been satisfied, may be proved for; but, as stated, payment will be postponed. Similarly, by Section 36 of the Bankruptcy Act, a husband or wife may prove for money lent to the wife or husband, as the case may be, for use in their trade or business, but payment is postponed until all claims of the other creditors have been satisfied.

Lodging Proofs of Debt.—Every creditor must prove his debt as soon as may be after the making of the receiving order. This may be done by delivering, or sending through the post, to the official receiver or the trustee, an affidavit verifying the debt, made by the creditor or some person authorized by him. The affidavit must contain or refer to a statement of account showing

the particulars of the debt, substantiated by vouchers. The trustee must then, within twenty-eight days, either admit or reject the proof, or require further evidence to be produced. If he rejects the proof he must send written notice to the creditor stating the grounds of rejection, and his decision is open to revision by the court.

Provable non-provable Debts.—Where a debt is incurred with a person who at the time had notice of an available act of bankruptcy, the creditor is barred from proving owing to his knowledge, and he gets nothing because he cannot prove his debt. The discharge of the bankrupt frees him from all claims of such a creditor.

Non-provable Debts.—The following debts are not provable in the bankruptcy—

(1) Family debts;
(2) Statute-barred debts;
(3) Damages for tort unless they have, before the date of the Receiving Order, become liquidated;
(4) Debts which in the opinion of the court cannot be estimated;
(5) Provable non-provable debts mentioned above.

Distribution of the Bankrupt's Property.

It is not necessary for the trustee to wait until he has realized the whole of the estate, in order to distribute it amongst the creditors. When he has realized part, he may distribute the proceeds, after paying expenses and preferential debts and retaining a certain amount for contingencies.

Order of Payment of Debts.—The order of payment of debts would be—

(1) Expenses of the official receiver and certain fees.
(2) Deposit of the petitioning creditor and his costs.
(3) Any allowance made to the debtor.
(4) Expenses of the trustee and the committee of inspection.
(5) Remuneration of the trustee.
(6) Moneys or property in the hands of the bankrupt as an officer of a Friendly Society (Friendly Societies Act, 1896, Section 35), and deposits in Savings Banks under similar circumstances (Savings Bank Act, 1863, Section 14).
(7) Preferential payments as in the case of winding-up of companies, (*a*) which rank equally among themselves

(*a*) See *ante*, p. 287.

and are payable in full, unless the property is insufficient to meet them, in which case they abate in equal proportions between themselves.

Preferential Claim in case of Apprenticeship.—Where a person was apprenticed or articled to the bankrupt, a proportion of the premium may be repaid. The amount varies according to the time during which he has served. But, instead of repayment, the trustee has power to arrange a transfer of the indenture or articles to some other person.

Landlord's Power of Distress.—A landlord to whom rent is due may distrain before or after the bankruptcy upon the goods or effects of the bankrupt. But, if distress is levied after the commencement of the bankruptcy (i.e., the date when the bankrupt committed the earliest act of bankruptcy on which the petition could have been founded), it is available only for six months' rent accrued due prior to the date of the adjudication, but the landlord may prove under the bankruptcy for any surplus due. If he has distrained earlier than three months prior to the receiving order, the distress is good for the whole of the rent due ; but if he has distrained within the three months prior to the date of the receiving order, all debts of preferential creditors must be met out of the proceeds. If the balance in hand after paying the preferential debts is not sufficient to satisfy the landlord's claim, he stands in the place of the persons to whom the payments had been made, and may prove in the bankruptcy and be paid as a preferential creditor. In no other case has a landlord any priority over other creditors. If the trustee should remain in possession of the premises without disclaiming, the landlord may distrain for rent accrued after the adjudication, in the ordinary way.

Debts payable pari passu.—Apart from the above debts, all others proved in the bankruptcy, except deferred creditors, are paid *pari passu* (proportionately to the amount available), together with interest (if funds will allow) at the rate of four per cent. per annum from the date of the receiving order. The amount payable as dividend depends on what is left after payment of the expenses and preferential debts. Notice of the trustee's intention to distribute a dividend must be given to the creditors and the Board of Trade, and it must be advertised in the *London Gazette.*

Deferred Creditors.—The following are deferred creditors :—

(1) A wife who has advanced money to her husband for use in his trade or business.

(2) A person who has lent money in return for a rate of interest varying with the profits.

(3) The vendor of the goodwill of a business who is to receive as consideration a share of the profits.
(4) A limited partner under the Limited Partnership Act, 1907.

Discharge of Bankrupt.

At any time after the making of the Order of Adjudication, the bankrupt may apply to the court for an Order of Discharge, that is, an order of the court releasing him from bankruptcy. The application, which will not be heard until after his public examination, is taken in open court after a fourteen days' notice to the creditors, who may oppose the application, as also may the official receiver and trustee. The court takes into consideration the report of the official receiver as to the bankrupt's conduct and affairs and has discretion to—

(1) Grant unconditionally the order asked for; or
(2) Refuse an absolute order of discharge; or
(3) Suspend the operation of the order for a specified time; or
(4) Grant an order subject to any conditions with respect to any earnings or income or after-acquired property of the bankrupt; or
(5) Grant the order subject to (3) and (4) together.

The court must refuse the discharge in all cases where the bankrupt has committed any misdemeanour under the Act or connected with his bankruptcy, or any felony connected therewith, unless for special reasons it determines otherwise.

Powers of Court as to Discharge.—On proof of any of the following facts, the court must either—

(1) Refuse the discharge; or
(2) Suspend the discharge for not less than two years; but it may be for less than two years if the only fact proved is that his assets do not equal ten shillings in the pound on the amount of unsecured liabilities; or
(3) Suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors; or
(4) Require the bankrupt as a condition of discharge to consent to judgment being entered against him by the official receiver or trustee for any balance which is not satisfied, such balance to be paid out of the future earnings or after-acquired property of the bankrupt.

If, however, after the expiration of two years from the date of such order the bankrupt satisfies the court that there is no

reasonable probability of his being in a position to comply with the terms of the order, the court may modify the terms.

The facts above referred to are—

(*a*) That the assets are not equal to ten shillings in the pound on the amount of the unsecured liabilities, unless he can show that this is due to circumstances for which he cannot justly be held responsible :

(*b*) That proper books of account have not been kept within the three years preceding the bankruptcy :

(*c*) That the bankrupt has continued to trade after knowing himself to be insolvent :

(*d*) That he had contracted any debt provable in the bankruptcy without having, at the time of contracting it, any reasonable or probable ground of expectation of being able to pay it :

(*e*) That he has failed to account satisfactorily for any loss or deficiency of assets :

(*f*) That the bankruptcy was brought on or contributed to by rash and hazardous speculation, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs :

(*g*) That any creditors have been put to unnecessary expense by a frivolous or vexatious defence to any action properly brought against the bankrupt :

(*h*) That he has, within three months preceding the date of the receiving order, incurred unjustifiable expense by bringing a frivolous or vexatious action :

(*i*) That within three months preceding such date, when unable to pay his debts, he gave undue preference to any of his creditors :

(*j*) That he has, within three months preceding such date, incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities :

(*k*) That he has on any previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors :

(*l*) That he has been guilty of any fraud or fraudulent breach of trust.

Disabilities of Bankrupt.—A bankrupt who is still undischarged, and for five years after discharge, is subject to disabilities as to holding certain public offices, viz., he cannot—

(1) Sit or vote in the House of Lords or any committee thereof,

(2) Be elected to or vote in the House of Commons,

(3) Be appointed or act as a Justice of the Peace,
(4) Be elected to or hold office on any municipal or local authority;

but, in some cases, the disability is removed if he obtains a certificate from the court to the effect that the bankruptcy was caused by misfortune, without any misconduct on his part. This is granted, at the discretion of the court, in proper cases, and any refusal to grant such a certificate is subject to appeal.

Effect of Order of Discharge.—An order of discharge releases the bankrupt from all debts provable in bankruptcy, except—

(1) Debts due to the Crown,
(2) Debts incurred by fraud or fraudulent breach of trust,
(3) Any judgment debt in an action for seduction, under an affiliation order, or under a judgment in a matrimonial cause.

The order of discharge does not release any person who, at the date of the receiving order, was a partner or co-trustee with the bankrupt, or a joint contractor or joint surety.

Small Bankruptcies.

By the Bankruptcy Act, 1883, it is provided as follows—

(1) That upon presentation of the petition, if the court is satisfied that the property of the debtor is unlikely to exceed £300, the court may order his estate to be administered in a summary manner. The official receiver then acts as trustee, without a committee of inspection. But the creditors may, at any time, pass a special resolution to the effect that a trustee be appointed and the bankruptcy proceed as if no order for summary administration had been made. In these cases, the first and final dividend must be paid within six months of the Adjudication Order.
(2) When a judgment has been obtained in a county court and the debtor is unable to pay, and alleges that his debts, including the judgment debt, do not amount to more than £50, the court may, without putting the estate into bankruptcy, make an order providing for the administration of his estate and for the payment of the debts in full or by instalments.

Administration of Estate of Person dying Insolvent.

By Section 130 of the Act of 1914, any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition had the debtor been alive, may present to the

court a petition praying for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy. Upon an order being made, the official receiver acts as trustee of the estate. The funeral and testamentary expenses are a preferential debt, and are payable in full in priority to all other debts.

Bankruptcy of Partners.

Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings, or be proceeded against, under the Act, in the name of the firm ; but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm, or the name of such person, to be disclosed. Where a receiving order is made against a firm, each partner must file a statement as to his separate estate, in addition to a statement of affairs of the partnership. Adjudication is against the partners individually and not against the firm. It was held in *Ex parte Hayman* (1878) that, where two persons become bankrupt who have traded as partners, although they were not so in fact, the assets of the business will be administered as joint estate.

The bankruptcy of a general partner acts as a ground for the dissolution of the firm ; but the bankruptcy of a limited partner is not a ground for dissolution. Where a partnership estate is being administered, the partnership property, known as the *joint estate*, is applied in payment of the debts of the partnership, and the separate estates of the individual partners, known as the *separate estate*, are applied in payment of the individual debts of the respective partners. If the joint estate should be deficient and there should be a surplus on the separate estate, that surplus is transferred to the joint estate. If there should be a surplus on the joint estate, such surplus is dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

A joint creditor who holds any security for his debt on the separate estate of one partner may retain his security and prove against the joint estate, provided that he does not receive, in all, more than the full amount of the debt ; and, similarly, with a separate creditor who holds a security on the joint estate. An unsecured creditor has sometimes the right of what is known as " Double Proof," that is, he has the option of proving against either the joint estate or the separate estate, and he may sometimes prove against both estates where each estate represents a different trade carried on by a different firm.

The joint creditors and the creditors of the separate partner's estates attend the first meeting of creditors, and the joint creditors appoint the trustee, but each estate has its own committee of inspection.

An order of discharge of a partner does not release any person who at the date of the receiving order was a partner with the bankrupt, that is to say, the discharge of one partner does not effect the discharge of all; discharge is a personal and individual matter.

Rule in ex parte Waring (1815).

"Where, as between the drawer and the acceptor of a bill of exchange, a security has, by virtue of a contract between them, been specifically appropriated to meet that bill at maturity, and has been lodged for that purpose by the drawer with the acceptor, then, if both drawer and acceptor become insolvent, and their estates are brought under a forced administration, the bill holder, though neither party nor privy to the contract, is entitled to have the specifically appropriated security applied in or towards payment of the bill," e.g., *A* draws on *B* and undertakes to give to *B* certain securities in case he may not be sufficiently in funds when the bill matures. Both *A* and *B* become insolvent and the bill is in the hands of *C*, a holder in due course. *C* is entitled to have the securities applied to the payment of the bill, even though he was not a party to, and in fact did not know of, the arrangement between *A* and *B*.

Deeds of Arrangement.

Where private arrangements are made between a debtor and his creditors, any deed of arrangement for the benefit of creditors generally must be registered at the Bills of Sale Office under the Deeds of Arrangement Act, 1914, in accordance with the regulations contained in the Act.

A deed of arrangement made for the benefit of creditors generally is void unless assented to by a majority in number and value of the creditors within twenty-one days of registration. By such a deed the property of the debtor is conveyed to a trustee or trustees, in order that it may be realized and distributed amongst the creditors, with a view of avoiding the publicity of bankruptcy proceedings. Such an arrangement binds only those creditors who assent thereto, and in that respect differs from a composition under the Bankruptcy Acts, with which it has no connection.

CHAPTER 15

ARBITRATION AND AWARDS

Reference should also be made to the following—
APPENDIX I.—Arbitration Act, 1889, page 479.

This subject is of considerable importance, and is rapidly becoming more important owing to the increasing tendency in the commercial world to refer disputes to arbitration as a means of settlement, in preference to recourse to an action in the courts.

Arbitration has been defined by ROMILY M.R. in *Collins* v. *Collins* (1858) as " a reference to the decision of one or more persons, either with or without an umpire, of a particular matter in difference between the parties." Such decision binds the parties in the same manner as a judgment.

The Arbitration Act of 1889, hereinafter referred to as " the Act," is practically a codification of the law and previous custom relating to the procedure involved, and it gives a legal sanction to and a means of enforcing the award, that is, the decision of the arbitrator or of the umpire. The arbitration proceedings under the Act are commenced by an agreement, in writing, by the parties concerned, by which they agree that their differences shall be referred to arbitration and that they will not, meanwhile, take proceedings in a court of law. Such an agreement may be made to submit future differences to arbitration. This agreement is known as a submission to arbitration, termed briefly " the submission." A submission may be made orally, but in that case it is not under the Act, but under the Common Law.

Arbitration Clause.

It is now usual to find in many contracts a stipulation that any dispute arising thereunder shall be referred to an arbitrator, e.g., in many Partnership Articles a clause similar to the following may be found—

"If during the continuance of the said partnership, or at any time afterwards, any difference shall arise between the said partners, or any of them, or between one or two of them, and the executors and administrators of the others or other of them or . . . in regard to the construction of any of the articles herein contained, or to any division, act, or thing to be made or done in pursuance hereof, or to any other matter or thing relating to the said partnership or the affairs thereof, such difference shall be forthwith referred to two or more arbitrators (as the case may be) one to be appointed by each party in difference, or to an umpire to be chosen by the arbitrators before entering on the consideration of the matters referred to them. . . ."

Arbitration under particular Statutes.

Several statutes now provide that proceedings thereunder shall or may be submitted to arbitration, but such proceedings often are not under the Arbitration Act, 1889, but depend on the particular statute conferring the right, e.g.—

Lands Clauses Act, 1845, where lands are authorized by any Act of Parliament to be taken for undertakings of a public nature.

Railway Clauses Act, 1845, where lands are taken or used for the construction of any railway, or are injuriously affected thereby. Similarly, on other points, the Acts of 1859, 1868, and the *Light Railways Act*, 1896, apply.

Markets and Fairs Clauses Act, 1847, for ascertaining the amount of compensation for lands authorized to be taken or used for making markets and fairs.

Metropolis Management Acts, 1855 and 1878, and the *London Building Act*, 1894.

Gas Works Clauses Act, 1871, various Electric Lighting Acts, and the *Factory and Workshops Acts*, 1891–1901; the *Building Societies Act*, 1894, and the *Friendly Societies Act*, 1896.

Workmen's Compensation Act, 1906, with reference to the amount of compensation due by the employer to injured workmen.

Companies (*Consolidation*) *Act*, 1908, empowers a company to refer to arbitration any existing or future difference between itself and any other company or person.

Besides these, there is a large number of Acts of minor importance which give the right to one party to proceed to arbitration rather than to have recourse to litigation.

An arbitrator is the person to whose decision the particular matter in dispute between the parties is referred, either by consent of the parties or by an Order of the Court. Courts of Arbitration have been established by many Chambers of Com-

merce and trade organizations in order that disputes between the members of the particular body may be thus easily and expeditiously settled. A panel is formed of persons specially skilled in such matters, who are ready to act as arbitrators, and from this panel the arbitrator for the particular reference is chosen, either by the parties or by the organization.

How Arbitrations are Instituted.

There are four ways in which an arbitration may be commenced, viz.—

Voluntary Submission out of Court, i.e., by mutual agreement between the parties, where no action is pending.

Under order of the Court, by consent of the parties, where an action is pending. Under Section 14 (*a*) of the Act, the court has power to order the whole matter to be tried before a special referee or arbitrator, or before an official referee or officer of the court.

Under compulsory order of the Court. By Section 13 the court may, subject to the right to have a case tried by a jury, refer any question arising in an action for inquiry or report to any official or special referee. And by Section 14 (*b*) and (*c*) the court may refer either the whole action or any particular question arising (i) where a prolonged examination of documents or scientific or local examination is necessary, (ii) where the question in dispute is wholly or partly a matter of account.

References under certain statutes (see above).

The Submission.

There are many disadvantages when a submission is not in writing, viz.,

(1) It is not governed by the Act of 1889;
(2) An award thereon cannot be enforced, except by action;
(3) The terms are liable to be disputed;

so that it is always advisable that it should be in writing. The submission, if under seal, requires a 10*s.* stamp; if not under seal a 6*d.* stamp, unless the subject matter is not of the value of £5, where no stamp is required. Unless a contrary intention is expressed, a submission under Section 1 of the Act is irrevocable except by leave of the court or a judge, and it has the same effect as if it had been made by an order of the court; and, by the First Schedule to the Act, in the absence of any expression of a contrary intention,—

(1) If no other mode of reference is provided, the reference shall be to a single arbitrator.
(2) If the reference is to two arbitrators, they may appoint an umpire at any time within the period during which they have power to make an award.
(3) The arbitrators shall make their award in writing within three months, except in cases where they enlarge, by writing, the time for making the award.
(4) If the arbitrators have allowed their time or extended time to expire without making an award, or have given notice in writing that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.
(5) The umpire shall, similarly, make his award within one month unless he enlarges, by writing, the time for making the award.
(6) The arbitrators and umpire may examine the parties and witnesses on oath and require the production of all books, papers, accounts and other documents in their possession.
(7) The award shall be final and binding on the parties.
(8) The costs of the reference and award shall be in the discretion of the arbitrators or umpire.

If the submission refers to an act which must be performed by deed, or if it is to bind a corporation, it must be under seal. In other cases this is not necessary.

If a party to a submission commences any legal proceedings against the other party in respect of the matter agreed to be referred, the court may, on the application of the other party, make an order staying the proceedings, providing that no steps other than entering appearance have been taken by the applicant, and that he was, and is still, ready and willing to do all things necessary to the proper conduct of the arbitration.

The parties to the submission may, by agreement, alter its terms ; but the arbitrator has no power to alter the terms of a submission. It may be amended by the court so as to give effect to the real intention of the parties, but even then no new matter may be introduced ; and, by Section 9 of the Act, the court may enlarge the time for making the award, whether the time for making it has expired or not.

Revocation of Submission.—As stated above, unless a contrary intention is expressed therein, a submission under the Act is irrevocable, except by leave of the court or a judge, and it has the same effect in all respects as if it had been made by order of the court. The court will not grant revocation except for very good cause shown, e.g., bankruptcy of one of the parties,

the misconduct of the arbitrator, where, as in *Drew* v. *Drew* (1898), there is litigation in progress between one party and the arbitrator, and probably the death of one party.

It was held in *In re Smith and Service* (1890) that after the submission has been agreed to by the parties, neither party can change his mind as to the desirability of arbitration so as to enable him to commence legal proceedings with the intention of putting an end to the arbitration.

Application for revocation is made by Summons at Chambers, and the parties interested must attend. The following are grounds for revocation of the authority of an arbitrator—

(1) Where there is corruption on the part of the arbitrator;
(2) Where he has improperly rejected or received evidence;
(3) Where he is biassed;
(4) Where he is not impartial;
(5) Where he refuses to state a case on a point of law when required to do so.

What the Submission may include.—Generally, any matter which may be determined by a civil action may be referred to arbitration. Pure questions of law or fact may be submitted, but not matters of a criminal nature, unless the injured party has a civil remedy as well as a remedy by indictment, as also may questions as to judgment, future differences, construction of a will, terms of separation between husband and wife, partition of lands of joint-tenants or tenants-in-common, etc. But matters of a public or purely criminal nature may not form the subject of a reference, nor may illegal matters, or a suit for divorce.

Exceptions to power to submit.—As a rule, any person can make a valid submission, but there are exceptions, viz.,

(1) In the case of an agent, the power to do so will depend on the terms of the agency;
(2) A trustee is dependent on the instrument under which he acts;
(3) One partner cannot bind the firm by a submission to arbitration;
(4) A bankrupt cannot make a valid submission;
(5) An infant has no capacity to make a submission.

Arbitrators and Umpire.

Any person may be appointed as arbitrator; but where he has misconducted himself, the court may remove him and set aside the award. This applies equally to an umpire.

Power of Court to appoint.—The court has power to appoint

an arbitrator, an umpire or a third arbitrator, in any of the following cases, viz.,

(1) Where the submission provides for reference to a single arbitrator and the parties cannot agree.
(2) If the arbitrator appointed refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy.
(3) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him.
(4) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, as in (2).

Any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint; and, if the appointment is not made within seven days after service of the notice, the court or a judge may appoint an arbitrator, umpire or third arbitrator, who will have like powers to act in the reference and make the award as if he had been appointed by consent of all the parties.

Umpire and Third Arbitrator.—Where an umpire is appointed by two arbitrators he usually sits with them in order that he may hear the evidence and so render it unnecessary to re-hear it in the event of a disagreement between the arbitrators, but he must take no part in the proceedings, nor attempt to influence the decision of the arbitrators in any way. This is where the difference lies between a third arbitrator and an umpire. The third arbitrator is on an equal footing with the other arbitrators, and takes part in the proceedings and deliberations, but the umpire takes no part until the arbitrators have disagreed. Where a third arbitrator is appointed he must agree with the others and sign the award, otherwise it is not valid. In *United Kingdom Mutual Association* v. *Houston* (1896), two arbitrators appointed a third arbitrator and only two signed the award, the third dissenting, and it was held that the award was invalid.

Powers and Duties of Arbitrator and Umpire.—The arbitrators or umpire, unless the submission expresses a contrary intention, have power to do the following things, viz.,

(1) Administer oaths to or take affirmations of the parties and witnesses appearing.
(2) State an award as to the whole or part thereof in the form of a special case for the opinion of the court.
(3) Correct in an award any clerical mistake or error arising from an accidental slip or omission.

Witnesses may be summoned by subpœna, and disobedience

would be contempt of court; and the giving of false evidence amounts to perjury; but the arbitrator or umpire has no power to call witnesses without the consent of the parties.

The proceedings before the arbitrator resemble the proceedings in an action. The arbitrator must observe the ordinary rules of evidence; he must hear both sides and take all evidence in *the presence of the parties.*

Should any witnesses be abroad the court has no power, in the case of a reference by consent, to order a commission to issue for the examination of such witness. But where an action is referred by order of the court, such power exists, and a referee has power to order a commission to issue for the purpose of taking evidence out of the jurisdiction.

Stating a Special Case is the laying before the court by the arbitrator of some point of law on which he is doubtful in order that he may obtain the assistance and instructions of the court thereon. This he may do at his discretion. Where the parties have referred to an arbitrator for decision a point of law, and have agreed to abide by his decision, they must abide by it; but in other cases either party may, at any time before the award is made, apply to the court to insist that the arbitrator shall state a case. When ordered by the court or a judge, an arbitrator must state a special case.

There is no appeal from the decision of the court on the point of law, but under some statutes there is an appeal from the decision of a County Court judge.

The Award.

The arbitrator, having heard both sides, must decide on all matters submitted to him, neither more nor less. His award must be in writing, unless the contrary intention is expressed in the submission, and it must conform to certain requisites. It need not be in any set form, but it must—

(1) Be certain and definite in its meaning.
(2) Be possible of performance.
(3) Be reasonable, having regard to the evidence taken.
(4) Be final and conclusive so far as the particular reference is concerned.
(5) Be dated and signed by all the arbitrators.
(6) Bear a 10*s.* stamp.

If a time for making the award is stated in the submission, it must be made within that time, otherwise within three months. The arbitrator may, however, where no time is stated, extend the period of three months by writing signed by himself.

When the award is ready to be delivered to the parties, the

usual procedure is for the arbitrator to notify the parties that it is ready and at the same time to state the amount of his charges. He usually inserts the amount in the award itself ; and he has a lien on the award until his charges are paid. Where one party pays the charges and receives the document containing the award, he is said to " take up the award." The same procedure applies to the award of the umpire.

If the submission has not fixed the arbitrator's remuneration, he may fix it himself in the award and, as stated, he has a lien on the submission and award until his fees are paid. In any case the remuneration would usually be stated in the award, and a lump sum should be stated by way of costs as, if the costs are left to be taxed, the remuneration also is liable to be taxed. Where the fee demanded is exorbitant, the party taking up the award must pay it and he can afterwards sue the arbitrator for the excess. Apart from this, however, there is no remedy against an arbitrator, either for making a corrupt award or for refusing to make an award unless, of course, he has entered into an agreement to make an award.

After the arbitrator has executed his award he may, if he so desires, state his award in the form of a special case, as he may do where he desires the court's guidance on a point of law during the proceedings. In this event, however, an appeal lies to the Court of Appeal.

In *Vawdrey* v. *Simpson* (1896), it was held that an arbitrator has the power to award a dissolution of partnership in cases where all matters in dispute between the parties are submitted to him.

An award may be referred back by the court for reconsideration by the arbitrators or umpire on certain grounds mentioned in the Act. Further, the award may be set aside—

(1) Where the arbitrator or umpire has misconducted himself, or the award has been improperly procured.
(2) If the award does not fulfil the requisites mentioned above.
(3) In a compulsory reference only, if the arbitrator has made a mistake of fact or law.

If the award stands, it may be enforced in the same manner as a judgment.

This important branch of the law should be studied more closely by reference to the Act itself.

ORDINARY FORM OF INLAND BILL OF EXCHANGE.

297 London Wall,
London, E.C.2.
1st January, 192 . . .

£100. 0. 0.

Stamp

Three months after date [*or* On Demand] pay *Charles Davies* or Order [*or* Bearer] the sum of *One hundred pounds* for value received.

Arthur Brown.

To *Ernest Franks*,
87b Chancery Lane,
London, W.C.2.

ORDINARY FORM OF FOREIGN BILL DRAWN AND PAYABLE OUTSIDE THE UNITED KINGDOM.

Colombo,
1st March, 192 . . .

£200. 0. 0.

Three months after sight pay this First of Exchange (Second and Third of same tenor and date unpaid) to *Charles Davies* or order the sum of *Two hundred pounds* for value received.

Arthur Brown.

To *Ernest Franks*,
Montreal.

ORDINARY FORM OF PROMISSORY NOTE.

£100. 0. 0. London, *1st January*, 192 . . .

Stamp

Three months after date [*or* On Demand] I promise to pay *Albert Bates* or Order [*or* Bearer] *One hundred pounds*, for value received.

Clifford Dormer.

ORDINARY FORM OF CHEQUE.

Bristol, *1st May*, 192 . . .

To LLOYDS BANK, Ltd.,
BRISTOL.

Stamp

Please pay *Arnold Franks* or Order [*or* Bearer] the sum of *Twenty-five pounds.*

£25. 0. 0. *James White.*

APPENDIX A

Bills of Exchange Act, 1882.

[45 & 46 Vict. Ch. 61.]

ARRANGEMENT OF SECTIONS. A.D. 1882.

PART I.

PRELIMINARY.

Section.
1. Short title.
2. Interpretation of terms.

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

3. Bill of exchange defined.
4. Inland and foreign bills.
5. Effect where different parties to bill are the same person.
6. Address to drawee.
7. Certainty required as to payee.
8. What bills are negotiable.
9. Sum payable.
10. Bill payable on demand.
11. Bill payable at a future time.
12. Omission of date in bill payable after date.
13. Ante-dating and post-dating.
14. Computation of time of payment.
15. Case of need.
16. Optional stipulations by drawer or indorser.
17. Definition and requisites of acceptance.
18. Time for acceptance.
19. General and qualified acceptances.
20. Inchoate instruments.
21. Delivery.

Capacity and Authority of Parties.

22. Capacity of parties.
23. Signature essential to liability.
24. Forged or unauthorised signature.
25. Procuration signatures.
26. Person signing as agent or in representative capacity.

The Consideration for a Bill.

Section.
27. Value, and holder for value.
28. Accommodation bill or party.
29. Holder in due course.
30. Presumption of value and good faith.

Negotiation of Bills.

31. Negotiation of bill.
32. Requisites of a valid indorsement.
33. Conditional indorsement.
34. Indorsement in blank and special indorsement
35. Restrictive indorsement.
36. Negotiation of over-due or dishonoured bill.
37. Negotiation of bill to party already liable thereon.
38. Rights of the holder.

General duties of the Holder.

39. When presentment for acceptance is necessary.
40. Time for presenting bill payable after sight.
41. Rules as to presentment for acceptance, and excuses for non-presentment.
42. Non-acceptance.
43. Dishonour by non-acceptance and its consequences.
44. Duties as to qualified acceptances.
45. Rules as to presentment for payment.
46. Excuses for delay or non-presentment for payment.
47. Dishonour by non-payment.
48. Notice of dishonour and effect of non-notice.
49. Rules as to notice of dishonour.
50. Excuses for non-notice and delay.
51. Noting or protest of bill.
52. Duties of holder as regards drawee or acceptor.

Liabilities of Parties.

53. Funds in hands of drawee.
54. Liability of acceptor.
55. Liability of drawer or indorser.
56. Stranger signing bill liable as indorser.
57. Measure of damages against parties to dishonoured bill.
58. Transferor by delivery and transferee.

Discharge of Bill.

59. Payment in due course.
60. Banker paying demand draft whereon indorsement is forged.
61. Acceptor the holder at maturity.
62. Express waiver.
63. Cancellation.
64. Alteration of bill.

Acceptance and Payment for Honour.

65. Acceptance for honour suprà protest.
66. Liability of acceptor for honour.
67. Presentment to acceptor for honour.
68. Payment for honour suprà protest.

Lost Instruments.

69. Holder's right to duplicate of lost bill.
70. Action on lost bill.

Bill in a Set.

71. Rules as to sets.

Conflict of Laws.

Section.
72. Rules where laws conflict.

PART III.

CHEQUES ON A BANKER.

73. Cheque defined.
74. Presentment of cheque for payment.
75. Revocation of banker's authority.

Crossed Cheques.

76. General and special crossings defined.
77. Crossing by drawer or after issue.
78. Crossing a material part of cheque.
79. Duties of banker as to crossed cheques.
80. Protection to banker and drawer where cheque is crossed.
81. Effect of crossing on holder.
82. Protection to collecting banker.

PART IV.

PROMISSORY NOTES.

83. Promissory note defined.
84. Delivery necessary.
85. Joint and several notes.
86. Note payable on demand.
87. Presentment of note for payment.
88. Liability of maker.
89. Application of Part II. to notes.

PART V.

SUPPLEMENTARY.

90. Good faith.
91. Signature.
92. Computation of time.
93. When noting equivalent to protest.
94. Protest when notary not accessible.
95. Dividend warrants may be crossed.
96. Repeal.
97. Savings.
98. Saving of summary diligence in Scotland.
99. Construction with other Acts, &c.
100. Parole evidence allowed in certain judicial proceedings in Scotland.

SCHEDULE I.—Form.

SCHEDULE II.—Repeals.

NOTE TO STUDENTS: *In studying the Act the cross references should be followed up carefully. These, and various additional notes, are inserted in italics in the relative sections for guidance.*

Chapter 61.

A.D. 1882.

An Act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes. [18th August 1882.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the Bills of Exchange Act, 1882.

Interpretation of terms.

2. In this Act, unless the context otherwise requires,—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Banker" includes a body of persons whether incorporated or not who carry on the business of banking.

"Bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

Technically, the possessor of a bill or note payable to order is not the bearer of it.

"Bill" means bill of exchange, and "note" means promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another. (*Refer to section* 21.)

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

"Person" includes a body of persons whether incorporated or not.

"Value" means valuable consideration. (*See section* 27.)

"Written" includes printed, and "writing" includes print.

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

Bill of exchange defined.

3. (1.) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

(2.) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the

drawee is to re-imburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

(4.) A bill is not invalid by reason—

(*a*.) That it is not dated ;

(*b*.) That it does not specify the value given, or that any value has been given therefor ;

(*c*.) That it does not specify the place where it is drawn or the place where it is payable.

Inland and foreign bills.

4. (1.) An inland bill is a bill which is or on the face of it purports to be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2.) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

Effect where different parties to bill are the same person.

5. (1.) A bill may be drawn payable to, or to the order of, the drawer ; or it may be drawn payable to, or to the order of, the drawee.

(2.) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Address to drawee.

6. (1.) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2.) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

Certainty required as to payee.

7. (1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2.) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3.) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

What bills are negotiable.

8. (1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4.) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable.

9. (1.) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a*.) With interest.

(*b*.) By stated instalments.

(*c*.) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(*d.*) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

Cp. the British custom of drawing bills payable at "Exchange as per indorsement."

(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

Interest under this subsection does not mean interest as damages on dishonour. (*See section* 57.)

Bill payable on demand.

10. (1.) A bill is payable on demand—

(*a.*) Which is expressed to be payable on demand, or at sight, or on presentation; or

(*b.*) In which no time for payment is expressed.

(2.) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

Refer to sections 14, 36 (3), 45 (2), 60 *and* 73.

Bill payable at a future time.

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

(1.) At a fixed period after date or sight.

Sections 14 (2) (3), 18 (3), *and* 65 (5) *indicate how the due date is determined.*

(2.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

Omission of date in bill payable after date.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Ante-dating and post-dating.

13. (1.) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2.) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation of time of payment.

14. Where a bill is not payable on demand the day on which it falls due is determined as follows:

(1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

(*a.*) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case herein-after provided for, due and payable on the preceding business day;

34 & 35 Vict. c. 17.

(*b.*) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the

last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.

(2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3.) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

See sections 65 (5) *and* 18 (3).

(4.) The term "month" in a bill means calendar month.

Case of need.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Optional stipulations by drawer or indorser.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1.) Negativing or limiting his own liability to the holder:

(2.) Waiving as regards himself some or all of the holder's duties.

Definition and requisites of acceptance.

17. (1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

See sections 2 *and* 21 *as to the necessity for notification or delivery.*

(2.) An acceptance is invalid unless it complies with the following conditions, namely:

(*a.*) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(*b.*) It must not express that the drawee will perform his promise by any other means than the payment of money.

Time for acceptance.

18. A bill may be accepted—

(1.) before it has been signed by the drawer, or while otherwise incomplete: (*See section* 20.)

(2.) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment:

(3.) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

General and qualified acceptances.

19. (1.) An acceptance is either (*a*) general or (*b*) qualified.

See section 44 *as to the holder's right to refuse a qualified acceptance; also section* 52 (2).

(2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

(*a.*) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated:

(*b.*) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn: (*See section* 44 (2).)

(*c.*) local, that is to say, an acceptance to pay only at a particular specified place:

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere:

(*d.*) qualified as to time:

(*e.*) the acceptance of some one or more of the drawees, but not of all.

Inchoate instruments.

20. (1.) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a primâ facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a primâ facie authority to fill up the omission in any way he thinks fit.

(2.) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Refer to section 12 *as to the omission of the date.*

Delivery.

21. (1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a.*) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be:

(*b.*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3.) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties.

Capacity of parties.

22. (1.) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

See page 37 *ante as to the capacity of a corporation.*

(2.) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that

(1.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:

(2.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

See page 104 *ante as to the capacity of partners in a firm to deal with bills.*

Forged or unauthorised signature.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

See sections 54 (2), 55, 60, 80 *and* 82 *for the provisions referred to.*

Procuration signature.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Person signing as agent or in representative capacity.

26. (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

Refer to pages 103–104 *ante as to the mode of signing on behalf of a company.*

The Consideration for a Bill.

Value and holder for value.

27. (1.) Valuable consideration for a bill may be constituted by,

(*a*) Any consideration sufficient to support a simple contract;

(*b*.) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2.) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

For example, if a holder for value indorses a bill to an agent for collection, the agent can sue the acceptor but cannot sue his own principal.

(3.) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

In the absence of special agreement to the contrary, a banker has a lien in respect of his advances on all securities of his customers which come into his hands in the ordinary course of business as a banker.

Accommodation bill or party.

28. (1.) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2.) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Holder in due course.

29. (1.) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions; namely,

(*a.*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

(*b.*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2.) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

"Force and fear" is the Scotch equivalent of duress.

(3.) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Refer to section 27 (2).

Presumption of value and good faith.

30. (1.) Every party whose signature appears on a bill is primâ facie deemed to have become a party thereto for value.

(2.) Every holder of a bill is primâ facie deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

The payment of its full money value for a bill would be almost conclusive of good faith, but other evidence may be necessary.

Negotiation of Bills.

Negotiation of bill.

31. (1.) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2.) A bill payable to bearer is negotiated by delivery.

(3.) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4.) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5.) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(1.) It must be written on the bill itself and be signed by the indorser The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.

(2.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

(3.) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

See section 97 (*d*) *as to dividend warrants.*

(4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described adding, if he think fit, his proper signature.

(5.) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

Conditional indorsement.

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Indorsement in blank and special indorsement.

34. (1.) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2.) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3.) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4.) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

Restrictive indorsement.

35. (1.) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection."

(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.

(3.) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation of overdue or dishonoured bill.

36. (1.) Where a bill is negotiable in its origin it continues to be negotiable until it has been (*a*) restrictively indorsed or (*b*) discharged by payment or otherwise.

Refer to sections 59–64 *as to discharge and to section* 35 (2) *as to restrictive indorsements.*

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3.) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

Bill on demand is defined in section 10. *By virtue of section* 73, *this sub-section applies to cheques : see ante page* 117.

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is primâ facie deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

Negotiation of bill to party already liable thereon.

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of the holder.

38. The rights and powers of the holder of a bill are as follows :

(1.) He may sue on the bill in his own name :

(2.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill :

A set off or counter claim would be a personal defence.

(3.) Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General duties of the Holder.

When presentment for acceptance is necessary.

39. (1.) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4.) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has no time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight.

40. (1.) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

See section 41 (2) *for the provisions.*

(2.) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3.) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules as to presentment for acceptance, and excuses for non-presentment.

41. (1.) A bill is duly presented for acceptance which is presented in accordance with the following rules :

(*a.*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue :

(*b.*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only :

(*c.*) Where the drawee is dead presentment may be made to his personal representative :

(*d.*) Where the drawee is bankrupt, presentment may be made to him or to his trustee :

(*e.*) Where authorised by agreement or usage, a presentment through the post office is sufficient.

(2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a.*) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill:

(*b.*) Where, after the exercise of reasonable diligence, such presentment cannot be effected:

(*c.*) Where although the presentment has been irregular, acceptance has been refused on some other ground:

(3.) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Non-acceptance.

42. (1.) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences.

43. (1.) A bill is dishonoured by non-acceptance—

(*a.*) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

(*b.*) when presentment for acceptance is excused and the bill is not accepted.

(2.) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

44. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2.) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

Rules as to presentment for payment.

45. Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

For the provisions referred to see section 46.

A bill is duly presented for payment which is presented in accordance with the following rules:—

(1.) Where the bill is not payable on demand, presentment must be made on the day it falls due.

The due date is calculated in accordance with section 14.

(2.) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a ressonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3.) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as herein-after defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4.) A bill is presented at the proper place:—

(*a.*) Where a place of payment is specified in the bill and the bill is there presented.

(*b.*) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

(*c.*) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.

(*d.*) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

(5.) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6.) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

It is, however, sufficient if payment is made, or if a refusal of payment is made, by one person on behalf of the others.

(7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be and with the exercise of reasonable diligence he can be found.

(8.) Where authorised by agreement or usage a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment.

46. (1.) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2.) Presentment for payment is dispensed with,—

(*a.*) Where, after the exercise of reasonable diligence presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(*b.*) Where the drawee is a fictitious person.

(*c.*) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(*d.*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(*e.*) By waiver of presentment, express or implied.

The waiver may be before or after the omission to present the bill. A drawer or indorser would be held to have waived presentment if he promises to pay the bill after he knows that it has not been duly presented.

Dishonour by non-payment.

47. (1.) A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid.

(2.) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

The provisions referred to are contained in sections 65–68.

Notice of dishonour and effect of non-notice.

48. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

(1.) Where a bill is dishonoured by non-acceptance, and notice of

dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2.) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules :—

(1.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2.) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.

(3.) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4.) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5.) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

The following is a useful form of notice :

DATE AND ADDRESS

To.....

.....

Please take notice that a bill, particulars of which are given below, upon which you are liable as drawer (*or indorser*) has been dishonoured by non-acceptance (*or non-payment*). I request immediate payment of the amount of the said bill, £....., *plus* expenses.

..... (Signature).

PARTICULARS :

Amount, £..... *Date*,..... *Tenor*.....*Due*.....

Drawer..... *Acceptor*.....*Payable at*.....

Indorsers.....

Answer given..... .....

(6.) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

This section recognises as legal the common practice of collecting bankers who, in lieu of notice of dishonour, return a dishonoured bill or cheque to a party liable.

(7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

(10.) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11.) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12.) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(*a.*) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(*b.*) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13.) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14.) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Excuses for non-notice and delay.

50. (1.) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence. *See sub-section* 49 (15) *as to delay in the post.*

(2.) Notice of dishonour is dispensed with—

(*a.*) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged :

(*b.*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice :

(*c.*) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment :

(*d.*) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

Noting or protest of bill.

51. (1.) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be ; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4.) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5.) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6.) A bill must be protested at the place where it is dishonoured: Provided that—

(*a.*) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day:

(*b.*) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(*a.*) The person at whose request the bill is protested:

(*b.*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

See sections 69, 70, *as to lost bills.*

(9.) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Duties of holder as regards drawee or acceptor.

52.—(1.) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2.) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

Qualified acceptances are dealt with in sections 19 *and* 44.

(3.) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4.) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties.

Funds in hands of drawee.

53.—(1.) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

(2.) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

Liability of acceptor.

54. The acceptor of a bill, by accepting it—

(1.) Engages that he will pay it according to the tenor of his acceptance:

(2.) Is precluded from denying to a holder in due course :
(*a.*) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill ;
(*b.*) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement ;
(*c.*) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of drawer or indorser.

55.—(1.) The drawer of a bill by drawing it—
(*a.*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;
(*b.*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.
(2.) The indorser of a bill by indorsing it—
(*a.*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;
(*b.*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements ;
(*c.*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Stranger signing bill liable as indorser.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

Measure of damages against parties to dishonoured bill.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows :
(1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—
(*a.*) The amount of the bill :
(*b.*) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case :
(*c.*) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.
(2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.
(3.) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.
Interest proper is defined in section 9 (3).

Transferor by delivery and transferee.

58.—(1.) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery."
(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill.

Payment in due course.

59.—(1.) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2.) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(*a.*) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(*b.*) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Banker paying demand draft whereon indorsement is forged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Acceptor the holder at maturity.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express waiver.

62.—(1.) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

63.—(1.) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2.) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Alteration of bill.

64.—(1.) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that—

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2.) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour.

Acceptance for honour suprà protest.

65.—(1.) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill suprà protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

See section 93. *It is sufficient if the bill has been noted, without the protest having actually been extended.*

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour suprà protest in order to be valid must—

(*a.*) be written on the bill, and indicate that it is an acceptance for honour :

(*b.*) be signed by the acceptor for honour.

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5.) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

Liability of acceptor for honour.

66.—(1.) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2.) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

If an acceptor for honour pays, his rights are the same as those of an ordinary payer for honour.

Presentment to acceptor for honour.

67.—(1.) Where a dishonoured bill has been accepted for honour suprà protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity ; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4.) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

Payment for honour suprà protest.

68.—(1.) Where a bill has been protested for non-payment, any person may intervene and pay it suprà protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6.) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7.) Where the holder of a bill refuses to receive payment supra protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments.

Holder's right to duplicate of lost bill.

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Action on lost bill.

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a Set.

Rules as to sets.

71.—(1.) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill

drawn in a set is discharged by payment, or otherwise, the whole bill is discharged.

Conflict of Laws.

Rules where laws conflict.

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows :

(1.) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance suprà protest, is determined by the law of the place where such contract was made.

Provided that—

(*a.*) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue :

(*b.*) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

(2.) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance suprà protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

(3.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4.) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III.

Cheques on a Banker.

Cheque defined.

73. A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

For the provisions referred to see sections 10, 36 (3), 45 (2), *and* 60.

Presentment of cheque for payment.

74. Subject to the provisions of this Act—

(*i.e., those of section* 46, *relating to excuses for non-presentment.*)

(1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

(2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3.) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

See ante, page 117.

Revocation of banker's authority.

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(1.) Countermand of payment:

(2.) Notice of the customer's death.

Other cases are dealt with ante, page 120.

Crossed Cheques.

General and special crossings defined.

76.—(1.) Where a cheque bears across its face an addition of—

(*a.*) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or

(*b.*) Two parallel transverse lines simply, either with or without the words "not negotiable";

that addition constitutes a crossing, and the cheque is crossed generally.

(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Section 17 *of the Revenue Act,* 1883, *extends the provisions of sections* 76–82 *of this Act to* any *document issued by a customer of a banker, and intended to enable any person to obtain payment from the banker of the sum indicated therein.*

Crossing by drawer or after issue.

77.—(1.) A cheque may be crossed generally or specially by the drawer.

(2.) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3.) Where a cheque is crossed generally the holder may cross it specially.

(4.) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5.) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6.) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

Crossing a material part of cheque.

78. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

Section 64 *explains the effect of a material alteration.*

Duties of banker as to crossed cheques.

79.—(1.) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered

otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Protection to banker and drawer where cheque is crossed.

80. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Effect of crossing on holder.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Protection to collecting banker.

82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

See section 76 *for definitions of general and special crossings. This section has been extended by the Bills of Exchange* (*Crossed Cheques*) *Act*, 1906. *See Appendix B.*

PART IV.

Promissory Notes.

Promissory note defined.

83.—(1.) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2.) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4.) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

Refer to section 4, *and also to sub-section* 89 (4).

Delivery necessary.

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

See sections 2 *and* 21 *for the meaning of delivery.*

Joint and several notes.

85 —(1.) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenour.

(2.) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

Note payable on demand.

86.—(1.) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2.) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3.) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of note for payment.

87.—(1.) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

Refer to section 52.

(2.) Presentment for payment is necessary in order to render the indorser of a note liable.

Compare sections 45 *and* 46.

(3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable ; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker.

88. The maker of a promissory note by making it—

(1.) Engages that he will pay it according to its tenour ;

(2.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Compare sections 52 *and* 57.

Application of Part II. to notes.

89.—(1.) Subject to the provisions in this part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2.) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3.) The following provisions as to bills do not apply to notes ; namely, provisions relating to—

(*a*). Presentment for acceptance ;

(*b*.) Acceptance ;

(*c*.) Acceptance suprà protest ;

(*d*.) Bills in a set.

(4.) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V.

Supplementary.

Good faith.

90. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

Signature.

91.—(1.) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2.) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Refer to sections 23 *to* 26.

Computation of time.

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"Non-business days" for the purposes of this Act mean—

(*a.*) Sunday, Good Friday, Christmas Day:

(*b.*) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it:

(*c.*) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

When noting equivalent to protest.

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

Refer to sections 65 *to* 68.

Protest when notary not accessible.

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

For Schedule 1 *see next page.*

Dividened warrants may be crossed.

95. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

Repeal.

96. The enactments mentioned in the second schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

Savings.

97.—(1.) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

(2.) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

33 & 34 Vict. c. 97.

(3.) Nothing in this Act or in any repeal effected thereby shall affect—

(*a.*) The provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue:

25 & 26 Vict. c. 89.

(*b.*) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint stock banks or companies:

See ante, page 103.

(*c.*) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively:

(*d.*) The validity of any usage relating to dividend warrants, or the indorsements thereof.

This preserves the usage of paying a dividend warrant on the endorsement of one of two or more payees.

Saving of summary diligence in Scotland.

98. Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

Construction with other Acts, &c.

99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

Parole evidence allowed in certain judicial proceedings in Scotland.

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenour of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

SCHEDULES.

FIRST SCHEDULE.

Section 94.

Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, *A. B.* [householder], of in the county of , in the United Kingdom, at the request of *C. D.*, there being no notary public available, did on the day of 188 at demand payment [*or* acceptance] of the bill of exchange hereunder written, from *E. F.*, to which demand he made answer [state answer, if any] wherefore I now, in the presence of *G. H.* and *J. K.*, do protest the said bill of exchange.

(Signed) *A. B.*

G. H., *J. K.* } Witnesses.

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title of Act and extent of Repeal.
9 Will. 3. c. 17. . .	An Act for the better payment of Inland Bills of Exchange.
3 & 4 Anne, c. 8. .	An Act for giving like remedy upon Promissory Notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.
17 Geo. 3. c. 30. . .	An Act for further restraining the negotiation of promissory notes and inland bills of exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. 3. c. 42. .	An Act for the better observance of Good Friday in certain cases therein mentioned.
48 Geo. 3. c. 88. .	An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange under a Limited sum in England.

Session and Chapter.	Title of Act and extent of Repeal.
1 & 2 Geo. 4. c. 78 .	An Act to regulate Acceptances of Bills of Exchange.
7 & 8 Geo. 4. c. 15. .	An Act for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day.
9 Geo. 4. c. 24 . .	An Act to repeal certain Acts, and to consolidate and amend the laws relating to bills of exchange and promissory notes in Ireland. in part; that is to say, Section two, four, seven, eight, nine, ten, eleven.
2 & 3 Will. 4. c. 98. .	An Act for regulating the protesting for non-payment of Bills of Exchange drawn payable at a place not being the place of the residence of the drawee or drawees of the same.
6 & 7 Will. 4. c. 58. .	An Act for declaring the law as to the day on which it is requisite to present for payment to Acceptor, or Acceptors suprà protest for honour, or to the Referee or Referees, in case of need, Bills of Exchange which have been dishonoured.
8 & 9 Vict. c. 37. in part. .	An Act to regulate the issue of bank notes in Ireland, and to regulate the repayment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service, in part; that is to say, Section twenty-four.
19 & 20 Vict. c. 97. in part. .	The Mercantile Law Amendment Act, 1856, in part; that is to say, Sections six and seven.
23 & 24 Vict. c. 111. in part. .	An Act for granting to Her Majesty certain duties of stamps, and to amend the laws relating to the stamp duties, in part; that is to say, Section nineteen.
34 & 35 Vict. c. 74. .	An Act to abolish days of grace in the case of bills of exchange and promissory notes payable at sight or on presentation.
39 & 40 Vict. c. 81 .	The Crossed Cheques Act, 1876.
41 & 42 Vict. c. 13. .	The Bills of Exchange Act, 1878.

ENACTMENT REPEALED AS TO SCOTLAND.

19 & 20 Vict. c. 60. in part. .	The Mercantile Law (Scotland) Amendment Act, 1856, in part; that is to say, Sections ten, eleven, twelve, thirteen, fourteen, fifteen, and sixteen.

APPENDIX B

Bills of Exchange (Crossed Cheques) Act, 1906.

[6 Edw. 7. Ch. 17.]

Chapter 17.

An Act to amend section eighty-two of the Bills of Exchange Act, 1882. [4th August 1906.] A.D. 1906.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. A banker receives payment of a crossed cheque for a customer within the meaning of section eighty-two of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof. Amendment of 45 & 46 Vict. c. 61. s. 82.

2. This Act may be cited as the Bills of Exchange (Crossed Cheques) Act, 1906, and this Act and the Bills of Exchange Act, 1882, may be cited together as the Bills of Exchange Acts, 1882 and 1906. Short title.

APPENDIX C

Bills of Exchange (Time of Noting) Act, 1917.

[7 & 8 Geo. 5. Ch. 48.]

Chapter 48.

An Act to amend the Bills of Exchange Act, 1882, with respect to the time for noting Bills. [8th November 1917.] A.D. 1917.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. In subsection (4) of section fifty-one of the Bills of Exchange Act, 1882 (which relates to the time of noting a dishonoured bill), the words "it must be noted on the day of its dishonour" shall be repealed, and the following words shall be substituted therefor, namely, "it "may be noted on the day of its dishonour and must be noted not "later than the next succeeding business day." Time of noting. 45 & 46 Vict. c. 61.

2. This Act may be cited as the Bills of Exchange (Time of Noting) Act, 1917, and shall be construed as one with the Bills of Exchange Act, 1882, and the Bills of Exchange Acts, 1882 and 1906, and this Act may be cited together as the Bills of Exchange Acts, 1882 to 1917. Short title and construction. 6 Edw. 7. c. 17.

APPENDIX D

Factors Act, 1889.

[52 & 53 Vict. Ch. 45.]

ARRANGEMENT OF SECTIONS.

A.D. 1889.

Preliminary.

Section.
1. Definitions.

Dispositions by Mercantile Agents.

2. Powers of mercantile agent with respect to disposition of goods.
3. Effect of pledges of documents of title.
4. Pledge for antecedent debt.
5. Rights acquired by exchange of goods or documents.
6. Agreements through clerks, &c.
7. Provisions as to consignors and consignees.

Dispositions by Sellers and Buyers of Goods

8. Disposition by seller remaining in possession.
9. Disposition by buyer obtaining possession.
10. Effect of transfer of documents on vendor's lien or right of stoppage in transitu.

Supplemental.

11. Mode of transferring documents.
12. Saving for rights of true owner.
13. Saving for common law powers of agent.
14. Repeal.
15. Commencement.
16. Extent of Act.
17. Short title.

Schedule.

A.D. 1889.

Chapter 45.

An Act to amend and consolidate the Factors Act.

[26th August 1889.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. For the purposes of this Act— Definitions.

(1) The expression "mercantile agent" shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods :

(2) A person shall be deemed to be in possession of goods or of the documents of title to goods, where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf :

(3) The expression "goods" shall include wares and merchandise :

(4) The expression "document of title" shall include any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented :

(5) The expression "pledge" shall include any contract pledging, or giving a lien or security on, goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability :

(6) The expression "person" shall include any body of persons corporate or unincorporate.

Dispositions by Mercantile Agents.

2.—(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same ; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same. Powers of mercantile agent with respect to disposition of goods.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition, which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent ; provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.

(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

3. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods. Effect of pledges of documents of title.

4. Where a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could ha ve been enforced by the pledgor at the time of the pledge. Pledge for antecedent debt.

Rights acquired by exchange of goods or documents.

5. The consideration necessary for the validity of a sale, pledge, or other disposition, of goods, in pursuance of this Act, may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

Agreements through clerks, &c.

6. For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent.

Provisions as to consignors and consignees.

7.—(1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition, by a mercantile agent.

Dispositions by Sellers and Buyers of Goods.

Disposition by seller remaining in possession.

8. Where a person, having sold goods, continues, or is, in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

Disposition by buyer obtaining possession.

9. Where a person, having bought or agreed to buy goods, obtains with the consent of the seller possession of the goods or the documents of title to the goods, the delivery or transfer, by that person or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Effect of transfer of documents on vendor's lien or right of stoppage in transitu.

10. Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage in transitu as the transfer of a bill of lading has for defeating the right of stoppage in transitu.

Supplemental.

Mode of transferring documents.

11. For the purposes of this Act, the transfer of a document may be by endorsement, or, where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

Saving for rights of true owner.

12.—(1) Nothing in this Act shall authorise an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing.

(2) Nothing in this Act shall prevent the owner of goods from recovering the goods from an agent or his trustee in bankruptcy at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

(3) Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against the agent.

Saving for common law powers of agent.

13. The provisions of this Act shall be construed in amplification and not in derogation of the powers exerciseable by an agent independently of this Act.

Repeal.

14. The enactments mentioned in the schedule to this Act are hereby repealed as from the commencement of this Act, but this repeal shall not affect any right acquired or liability incurred before the commencement of this Act under any enactment hereby repealed.

Commencement.

15. This Act shall commence and come into operation on the first day of January one thousand eight hundred and ninety.

Extent of Act.

16. This Act shall not extend to Scotland.

Short title.

17. This Act may be cited as the Factors Act, 1889.

SCHEDULE.

Enactments Repealed.

Section 14.

Session and Chapter.	Title.	Extent of Repeal.
4 Geo. 4. c. 83.	An Act for the better protection of the property of merchants and others who may hereafter enter into contracts or agreements in relation to goods, wares, or merchandises entrusted to factors or agents.	The whole Act.
6 Geo. 4. c. 94.	An Act to alter and amend an Act for the better protection of the property of merchants and others who may hereafter enter into contracts or agreements in relation to goods, wares, or merchandise entrusted to factors or agents.	The whole Act.
5 & 6 Vict. c. 39.	An Act to amend the law relating to advances bonâ fide made to agents entrusted with goods.	The whole Act.
40 & 41 Vict. c. 39.	An Act to amend the Factors Acts.	The whole Act.

APPENDIX E

Sale of Goods Act, 1893.

[56 & 57 Vict. Ch. 71.]

A.D. 1893.

ARRANGEMENT OF SECTIONS.

PART I.

FORMATION OF THE CONTRACT.

Contract of Sale.

Section.

1. Sale and agreement to sell.
2. Capacity to buy and sell.

Formalities of the Contract.

3. Contract of sale, how made.
4. Contract of sale for ten pounds and upwards.

Subject matter of Contract.

5. Existing or future goods.
6. Goods which have perished.
7. Goods perishing before sale but after agreement to sell.

The Price.

8. Ascertainment of price.
9. Agreement to sell at valuation.

Conditions and Warranties.

10. Stipulations as to time.
11. When condition to be treated as warranty.
12. Implied undertaking as to title, &c.
13. Sale by description.
14. Implied conditions as to quality or fitness.

Sale by Sample.

15. Sale by sample.

PART II.

EFFECTS OF THE CONTRACT.

Transfer of Property as between Seller and Buyer.

16. Goods must be ascertained.
17. Property passes when intended to pass.
18. Rules for ascertaining intention.
19. Reservation of right of disposal.
20. Risk primâ facie passes with property.

Transfer of Title.

Section.
21. Sale by person not the owner.
22. Market overt.
23. Sale under voidable title.
24. Revesting of property in stolen goods on conviction of offender.
25. Seller or buyer in possession after sale.
26. Effect of writs of execution.

PART III.

PERFORMANCE OF THE CONTRACT.

27. Duties of seller and buyer.
28. Payment and delivery are concurrent conditions.
29. Rules as to delivery.
30. Delivery of wrong quantity.
31. Instalment deliveries.
32. Delivery to carrier.
33. Risk where goods are delivered at distant place.
34. Buyer's right of examining the goods.
35. Acceptance.
36. Buyer not bound to return rejected goods.
37. Liability of buyer for neglecting or refusing delivery of goods.

PART IV.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

38. Unpaid seller defined.
39. Unpaid seller's rights.
40. Attachment by seller in Scotland.

Unpaid Seller's Lien.

41. Seller's lien.
42. Part delivery.
43. Termination of lien.

Stoppage in Transitu.

44. Right of stoppage in transitu.
45. Duration of transit.
46. How stoppage in transitu is effected.

Re-sale by Buyer or Seller.

47. Effect of sub-sale or pledge by buyer.
48. Sale not generally rescinded by lien or stoppage in transitu.

PART V.

ACTIONS FOR BREACH OF THE CONTRACT.

Remedies of the Seller.

49. Action for price.
50. Damages for non-acceptance.

Remedies of the Buyer.

Section.
51. Damages for non-delivery.
52. Specific performance.
53. Remedy for breach of warranty.
54. Interest and special damages.

PART VI.

SUPPLEMENTARY.

55. Exclusion of implied terms and conditions.
56. Reasonable time a question of fact.
57. Rights and duties under Act enforceable by action.
58. Auction sales.
59. Payment into court in Scotland when breach of warranty alleged.
60. Repeals.
61. Savings.
62. Interpretation of terms.
63. Commencement.
64. Short title.
SCHEDULE.

Chapter 71.

A.D. 1893.

An Act for codifying the Law relating to the Sale of Goods. [20th February 1894.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I

FORMATION OF THE CONTRACT.

Contract of Sale.

Sale and agreement to sell.

1.—(1.) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.

(2.) A contract of sale may be absolute or conditional.

(3.) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.

(4.) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Capacity to buy and sell.

2. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Provided that where necessaries are sold and delivered to an infant, or minor, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.

Formalities of the Contract.

Contract of sale, how made.

3. Subject to the provisions of this Act and of any statute in that behalf, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

Provided that nothing in this section shall affect the law relating to corporations.

Contract of sale for ten pounds and upwards.

4.—(1.) A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.

(2.) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

(3.) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.

(4.) The provisions of this section do not apply to Scotland.

Subject matter of Contract.

Existing or future goods.

5.—(1.) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods."

(2.) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3.) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods which have perished.

6. Where there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

Goods perishing before sale, but after agreement to sell.

7. Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

The Price

Ascertainment of price.

8.—(1.) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2.) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation.

9.—(1.) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided; provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2.) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Conditions and Warranties.

Stipulations as to time.

10.—(1.) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

(2.) In a contract of sale "month" means primâ facie calendar month.

When condition to be treated as warranty.

11.—(1.) In England or Ireland—

(*a.*) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated:

(*b.*) Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract:

(*c.*) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect.

(2.) In Scotland, failure by the seller to perform any material part of a contract of sale is a breach of contract, which entitles the buyer either within a reasonable time after delivery to reject the goods and treat the contract as repudiated, or to retain the goods and treat the failure to perform such material part as a breach which may give rise to a claim for compensation or damages.

(3.) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied undertaking as to title, &c.

12. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

(1.) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass:

(2.) An implied warranty that the buyer shall have and enjoy quiet possession of the goods:

(3.) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

Sale by description.

13. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied conditions as to quality or fitness.

14. Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—

(1.) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose:

(2.) Where goods are bought by description from a seller who deals in goods of that description (whether he be a manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed:

(3.) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade:

(4.) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Sale by Sample.

Sale by sample.

15.—(1.) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2.) In the case of a contract for sale by sample—

(*a.*) There is an implied condition that the bulk shall correspond with the sample in quality:

(*b.*) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample:

(*c.*) There is an implied condition that the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

PART II.

Effects of the Contract.

Transfer of Property as between Seller and Buyer.

Goods must be ascertained.

16. Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

17.—(1.) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2.) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.

Rules for ascertaining intention.

18. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1.—Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof.

Rule 3.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof.

Rule 4.—When goods are delivered to the buyer on approval or "on sale or return" or other similar terms the property therein passes to the buyer :—

(*a.*) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction :

(*b.*) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5.—(1.) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

(2.) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodier (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Reservation of right of disposal.

19.—(1.) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee or custodier for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2.) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is primâ facie deemed to reserve the right of disposal.

(3.) Where the seller of goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Risk primâ facie passes with property.

20. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodier of the goods of the other party.

Transfer of Title.

Sale by person not the owner.

21.—(1.) Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2.) Provided also that nothing in this Act shall affect—

(*a.*) The provisions of the Factors Acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(*b.*) The validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Market overt.

22.—(1.) Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.

(2.) Nothing in this section shall affect the law relating to the sale of horses.

(3.) The provisions of this section do not apply to Scotland.

Sale under voidable title.

23. When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Revesting of property in stolen goods on conviction of offender.

24.—(1.) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise.

(2.) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

(3.) The provisions of this section do not apply to Scotland.

Seller or buyer in possession after sale.

25.—(1.) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2.) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(3.) In this section the term "mercantile agent" has the same meaning as in the Factors Acts.

Effect of writs of execution.

26.—(1.) A writ of fieri facias or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ to endorse upon the back thereof the hour, day, month, and year when he received the same.

Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

(2.) In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution.

(3.) The provisions of this section do not apply to Scotland.

PART III.

Performance of the Contract.

Duties of seller and buyer.

27. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

28. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Rules as to delivery.

29.—(1.) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence: Provided that, if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

(2.) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3.) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf; provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4.) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5.) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

Delivery of wrong quantity.

30.—(1.) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate.

(2.) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3.) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4.) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

Instalment deliveries.

31.—(1.) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2.) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

Delivery to carrier.

32.—(1.) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is primâ facie deemed to be a delivery of the goods to the buyer.

(2.) Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3.) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at distant place.

33. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

34.—(1.) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2.) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

35. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

36. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

37. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART IV.

Rights of Unpaid Seller against the Goods.

Unpaid seller defined.

38.—(1.) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—

(*a.*) When the whole of the price has not been paid or tendered;

(*b.*) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2.) In this part of this Act the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights.

39.—(1.) Subject to the provisions of this Act, and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(*a.*) A lien on the goods or right to retain them for the price while he is in possession of them;

(*b.*) In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

(*c.*) A right of re-sale as limited by this Act.

(2.) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

Attachment by seller in Scotland.

40. In Scotland a seller of goods may attach the same while in his own hands or possession by arrestment or poinding; and such arrestment or poinding shall have the same operation and effect in a competition or otherwise as an arrestment or poinding by a third party.

Unpaid Seller's Lien.

Seller's lien.

41.—(1.) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

(*a.*) Where the goods have been sold without any stipulation as to credit;

(*b.*) Where the goods have been sold on credit, but the term of credit has expired;

(*c.*) Where the buyer becomes insolvent.

(2.) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodier for the buyer.

Part delivery.

42. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention.

Termination of lien.

43.—(1.) The unpaid seller of goods loses his lien or right of retention thereon—

(*a.*) When he delivers the goods to a carrier or other bailee or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(*b.*) When the buyer or his agent lawfully obtains possession of the goods;

(*c.*) By waiver thereof.

(2.) The unpaid seller of goods, having a lien or right of retention thereon, does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods.

Stoppage in transitu.

Right of stoppage in transitu.

44. Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

Duration of transit.

45.—(1.) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee or custodier for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee or custodier.

(2.) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3.) If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodier acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodier for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4.) If the goods are rejected by the buyer, and the carrier or other bailee or custodier continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5.) When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier, or as agent to the buyer.

(6.) Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.

(7.) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage in transitu is effected.

46.—(1.) The unpaid seller may exercise his right of stoppage in transitu either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee or custodier in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2.) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee or custodier in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

Re-sale by Buyer or Seller.

Effect of sub-sale or pledge by buyer.

47. Subject to the provisions of this Act, the unpaid seller's right of lien or retention or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage in transitu is defeated, and if such last-mentioned transfer was made by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transitu can only be exercised subject to the rights of the transferee.

Sale not generally rescinded by lien or stoppage in transitu.

48.—(1.) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage in transitu.

(2.) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transitu re-sells the goods, the buyer acquires a good title thereto as against the original buyer.

(3.) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.

(4.) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

PART V.

Actions for Breach of the Contract.

Remedies of the Seller.

Action for price.

49.—(1.) Where under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.

(2.) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

(3.) Nothing in this section shall prejudice the right of the seller in Scotland to recover interest on the price from the date of tender of the goods, or from the date on which the price was payable, as the case may be.

Damages for non-acceptance.

50.—(1.) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2.) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3.) Where there is an available market for the goods in question the measure of damages is primâ facie to be ascertained by the difference beween the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

Remedies of the Buyer

Damages for non-delivery.

51.—(1.) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2.) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.

(3.) Where there is an available market for the goods in question the measure of damages is primâ facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Specific performance.

52. In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree.

The provisions of this section shall be deemed to be supplementary to, and not in derogation of, the right of specific implement in Scotland.

Remedy for breach of warranty.

53.—(1.) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may

(*a*) set up against the seller the breach of warranty in diminution or extinction of the price; or

(*b*) maintain an action against the seller for damages for the breach of warranty.

(2.) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(3.) In the case of breach of warranty of quality such loss is primâ facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

(4.) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

(5.) Nothing in this section shall prejudice or affect the buyer's right of rejection in Scotland as declared by this Act.

Interest and special damages.

54. Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VI.

Supplementary.

Exclusion of implied terms and conditions.

55. Where any right, duty, or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

Reasonable time a question of fact.

56. Where, by this Act, any reference is made to a reasonable time the question what is a reasonable time is a question of fact.

Rights, &c., enforceable by action.

57. Where any right, duty, or liability is declared by this Act, it may, unless otherwise by this Act provided, be enforced by action.

Auction sales.

58. In the case of a sale by auction—

(1.) Where goods are put up for sale by auction in lots, each lot is primâ facie deemed to be the subject of a separate contract of sale :

(2.) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any bidder may retract his bid :

(3.) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person : Any sale contravening this rule may be treated as fraudulent by the buyer :

(4.) A sale by auction may be notified to be subject to a reserve or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

Payment into court in Scotland when breach of warranty alleged.

59. In Scotland where a buyer has elected to accept goods which he might have rejected, and to treat a breach of contract as only giving rise to a claim for damages, he may, in an action by the seller for the price, be required, in the discretion of the court before which the action depends, to consign or pay into court the price of the goods, or part thereof, or to give other reasonable security for the due payment thereof.

Repeal.

60. The enactments mentioned in the schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

Savings.

61.—(1.) The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act contained.

(2.) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3.) Nothing in this Act or in any repeal effected thereby shall affect the enactments relating to bills of sale, or any enactment relating to the sale of goods which is not expressly repealed by this Act.

(4.) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

(5.) Nothing in this Act shall prejudice or affect the landlord's right of hypothec or sequestration for rent in Scotland.

Interpretation of terms.

62.—(1.) In this Act, unless the context or subject matter otherwise requires,—

"Action" includes counterclaim and set off, and in Scotland condescendence and claim and compensation:
"Bailee" in Scotland includes custodier:
"Buyer" means a person who buys or agrees to buy goods:
"Contract of sale" includes an agreement to sell as well as a sale:
"Defendant" includes in Scotland defender, respondent, and claimant in a multiplepoinding:
"Delivery" means voluntary transfer of possession from one person to another:
"Document of title to goods" has the same meaning as it has in the Factors Acts:
"Factors Acts" mean the Factors Act, 1889, the Factors (Scotland) Act, 1890, and any enactment amending or substituted for the same: 52 & 53 Vict. c. 45. 53 & 54 Vict. c. 40.
"Fault" means wrongful act or default:
"Future goods" mean goods to be manufactured or acquired by the seller after the making of the contract of sale:
"Goods" include all chattels personal other than things in action and money, and in Scotland all corporeal moveables except money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale:
"Lien" in Scotland includes right of retention:
"Plaintiff" includes pursuer, complainer, claimant in a multiplepoinding and defendant or defender counterclaiming:
"Property" means the general property in goods, and not merely a special property:
"Quality of goods" includes their state or condition:
"Sale" includes a bargain and sale as well as a sale and delivery:
"Seller" means a person who sells or agrees to sell goods:
"Specific goods" mean goods identified and agreed upon at the time a contract of sale is made:
"Warranty" as regards England and Ireland means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.
As regards Scotland a breach of warranty shall be deemed to be a failure to perform a material part of the contract.

(2.) A thing is deemed to be done "in good faith" within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not.

(3.) A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he has become a notour bankrupt or not.

(4.) Goods are in a "deliverable state" within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them.

63. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four. Commencement.

64. This Act may be cited as the Sale of Goods Act, 1893. Short title.

SCHEDULE.

This schedule is to be read as referring to the revised edition of the statutes prepared under the direction of the Statute Law Committee.

ENACTMENTS REPEALED.

Session and Chapter.	Title of Act and Extent of Repeal.
1 Jac. 1. c. 21. . .	An Act against brokers. The whole Act.
29 Cha. 2. c. 3. . .	An Act for the prevention of frauds and perjuries. In part; that is to say, sections fifteen and sixteen.*
9 Geo. 4. c. 14. . .	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements. In part; that is to say, section seven.
19 & 20 Vict. c. 60. .	The Mercantile Law Amendment (Scotland) Act, 1856. In part; that is to say, sections one, two, three, four, and five.
19 & 20 Vict. c. 97. .	The Mercantile Law Amendment Act, 1856. In part; that is to say, sections one and two.

* Commonly cited as sections sixteen and seventeen.

APPENDIX F

Partnership Act, 1890.

[53 & 54 Vict. Ch. 39.]

A.D. 1890.

ARRANGEMENT OF SECTIONS.

Nature of Partnership.

Section.

1. Definition of partnership.
2. Rules for determining existence of partnership.
3. Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency.
4. Meaning of firm.

Relations of Partners to persons dealing with them.

5. Power of partner to bind the firm.
6. Partners bound by acts on behalf of firm.
7. Partner using credit of firm for private purposes.
8. Effect of notice that firm will not be bound by acts of partner.
9. Liability of partners.
10. Liability of the firm for wrongs.
11. Misapplication of money or property received for or in custody of the firm.
12. Liability for wrongs joint and several.
13. Improper employment of trust-property for partnership purposes.
14. Persons liable by "holding out."
15. Admissions and representations of partners.
16. Notice to acting partner to be notice to the firm.
17. Liabilities of incoming and outgoing partners.
18. Revocation of continuing guaranty by change in firm.

Relations of Partners to one another.

19. Variation by consent of terms of partnership.
20. Partnership property.
21. Property bought with partnership money.
22. Conversion into personal estate of land held as partnership property.
23. Procedure against partnership property for a partner's separate judgment debt.
24. Rules as to interests and duties of partners subject to special agreement.
25. Expulsion of partner.
26. Retirement from partnership at will.
27. Where partnership for term is continued over, continuance on old terms presumed.
28. Duty of partners to render accounts, &c.
29. Accountability of partners for private profits.
30. Duty of partner not to compete with firm.
31. Rights of assignee of share in partnership.

Dissolution of Partnership, and its consequences.

Section.
32. Dissolution by expiration or notice.
33. Dissolution by bankruptcy, death, or charge.
34. Dissolution by illegality of partnership.
35. Dissolution by the Court.
36. Rights of persons dealing with firm against apparent members of firm.
37. Right of partners to notify dissolution.
38. Continuing authority of partners for purposes of winding up.
39. Rights of partners as to application of partnership property.
40. Apportionment of premium where partnership prematurely dissolved.
41. Rights where partnership dissolved for fraud or misrepresentation.
42. Right of outgoing partner in certain cases to share profits made after dissolution.
43. Retiring or deceased partner's share to be a debt.
44. Rule for distribution of assets on final settlement of accounts.

Supplemental.

45. Definitions of "court" and "business."
46. Saving for rules of equity and common law.
47. Provision as to bankruptcy in Scotland.
48. Repeal.
49. Commencement of Act.
50. Short title.
SCHEDULE.

Chapter 39.

A.D. 1890.

An Act to declare and amend the Law of Partnership.

[14th August 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Nature of Partnership.

Definition of partnership.

1.—(1.) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

(2.) But the relation between members of any company or association which is—

25 & 26 Vict. c. 89.

(*a.*) Registered as a company under the Companies Act, 1862, or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies ; or

(*b.*) Formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter ; or

(*c.*) A company engaged in working mines within and subject to the jurisdiction of the Stannaries :

is not a partnership within the meaning of this Act.

Rules for determining existence of partnership.

2. In determining whether a partnership does or does not exist, regard shall be had to the following rules :

(1.) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

(2.) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

(3.) The receipt by a person of a share of the profits of a business is *primâ facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—

(*a.*) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such:

(*b*) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such:

(*c.*) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such:

(*d.*) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto:

(*e.*) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency.

3. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

Meaning of firm.

4.—(1.) Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.

(2.) In Scotland a firm is a legal person distinct from the partners of whom it is composed, but an individual partner may be charged on a decree or diligence directed against the firm, and on payment of the debts is entitled to relief *pro ratâ* from the firm and its other members.

Relations to Partners to persons dealing with them.

Power of partner to bind the firm.

5. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom

he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

Partners bound by acts on behalf of firm.

6. An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners.

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

Partner using credit of firm for private purposes.

7. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner.

Effect of notice that firm will not be bound by acts of partner.

8. If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

Liability of partners.

9. Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separate debts.

Liability of the firm for wrongs.

10. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

Misapplication of money or property received for or in custody of the firm.

11. In the following cases; namely—

(*a.*) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and

(*b.*) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm;

the firm is liable to make good the loss.

Liability for wrongs joint and several.

12. Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either of the two last preceding sections.

Improper employment of trust-property for partnership purposes.

13. If a partner, being a trustee, improperly employs trust-property in the business or on the account of the partnership, no other partner is liable for the trust-property to the persons beneficially interested therein.

Provided as follows—

(1.) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and

(2.) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

Persons liable by "holding out."

14.—(1.) Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2.) Provided that where after a partner's death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors' or administrators' estate or effects liable for any partnership debts contracted after his death.

Admissions and representations of partners.

15. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

Notice to acting partner to be notice to the firm.

16. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liabilities of incoming and outgoing partners.

17.—(1.) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2.) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3.) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Revocation of continuing guaranty by change in firm.

18. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given.

Relations of Partners to one another.

Variation by consent of terms of partnership.

19. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing.

Partnership property.

20.—(1.) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2.) Provided that the legal estate or interest in any land, or in Scotland the title to and interest in any heritable estate, which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3.) Where co-owners of an estate or interest in any land, or in Scotland of any heritable estate, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase.

Property bought with partnership money.

21. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

Conversion into personal estate of land held as partnership property.

22. Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal or moveable and not real or heritable estate.

Procedure against partnership property for a partner's separate judgment debt.

23.—(1.) After the commencement of this Act a writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2.) The High Court, or a judge thereof, or the Chancery Court of the county palatine of Lancaster, or a county court, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3.) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

(4.) This section shall apply in the case of a cost-book company as if the company were a partnership within the meaning of this Act.

(5.) This section shall not apply to Scotland.

Rules as to interests and duties of partners subject to special agreement.

24. The interests of partners in the parnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules :

(1.) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.

(2.) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—

(*a.*) In the ordinary and proper conduct of the business of the firm ; or

(*b.*) In or about anything necessarily done for the preservation of the business or property of the firm.

(3.) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per cent. per annum from the date of the payment or advance.

(4.) A partner is not entitled, before the ascertainment of profits, to interest on capital subscribed by him.

(5.) Every partner may take part in the management of the partnership business.

(6.) No partner shall be entitled to remuneration for acting in the partnership business.

(7.) No person may be introduced as a partner without the consent of all existing partners.

(8.) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.

(9.) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

Expulsion of partner.

25. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

Retirement from partnership at will.

26.—(1.) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

(2.) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

Where partnership for term is continued over, continuance on old terms presumed.

27.—(1.) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2.) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

Duty of partners to render accounts, &c.

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Accountability of partners for private profits.

29.—(1.) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connexion.

(2.) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

Duty of partner not to compete with firm.

30. If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

Rights of assignee of share in partnership.

31.—(1.) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2.) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Dissolution of Partnership, and its consequences.

Dissolution by expiration or notice.

32. Subject to any agreement between the partners, a partnership is dissolved—

(*a.*) If entered into for a fixed term, by the expiration of that term :

(*b.*) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking :

(*c.*) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution by bankruptcy, death, or charge.

33.—(1.) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2.) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

Dissolution by illegality of partnership.

34. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

Dissolution by the Court.

35. On application by a partner the Court may decree a dissolution of the partnership in any of the following cases :

(*a.*) When a partner is found lunatic by inquisition, or in Scotland by cognition, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner :

(*b.*) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract :

(*c.*) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business :

(*d.*) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him :

(*e.*) When the business of the partnership can only be carried on at a loss :

(*f.*) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

Rights of persons dealing with firm against apparent members of firm.

36.—(1.) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2.) An advertisement in the London Gazette as to a firm whose principal place of business is in England or Wales, in the Edinburgh Gazette as to a firm whose principal place of business is in Scotland, and in the Dublin Gazette as to a firm whose principal place of business is in Ireland, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

(3.) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.

Right of partners to notify dissolution.

37. On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

Continuing authority of partners for purposes of winding up.

38. After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

Rights of partners as to application of partnership property.

39. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm.

Apportionment of premium where partnership prematurely dissolved.

40. Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued; unless

(*a.*) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium, or

(*b.*) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

Rights where partnership dissolved for fraud or misrepresentation.

41. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(*a.*) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him, and is

(*b.*) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and

(*c.*) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

Right of outgoing partner in certain cases to share profits made after dissolution.

42.—(1.) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent. per annum on the amount of his share of the partnership assets.

(2.) Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Retiring or deceased partner's share to be a debt.

43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

Rule for distribution of assets on final settlement of accounts.

44. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed :

(*a.*) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits :

(*b.*) The assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order :

1. In paying the debts and liabilities of the firm to persons who are not partners therein :
2. In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital :
3. In paying to each partner rateably what is due from the firm to him in respect of capital :
4. The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

Supplemental.

Definitions of "court" and "business."

45. In this Act, unless the contrary intention appears,—

The expression "court" includes every court and judge having jurisdiction in the case :

The expression "business" includes every trade, occupation, or profession.

Saving for rules of equity and common law.

46. The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

Provisions as to bankruptcy in Scotland.

47.—(1.) In the application of this Act to Scotland the bankruptcy of a firm or of an individual shall mean sequestration under the Bankruptcy (Scotland) Acts, and also in the case of an individual the issue against him of a decree of cessio bonorum.

(2.) Nothing in this Act shall alter the rules of the law of Scotland relating to the bankruptcy of a firm or of the individual partners thereof.

Repeal.

48. The Acts mentioned in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Commencement of Act.

49. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-one.

Short title.

50. This Act may be cited as the Partnership Act, 1890.

SCHEDULE.

Section 48.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
19 & 20 Vict. c. 60.	The Mercantile Law Amendment (Scotland) Act, 1856.	Section seven.
19 & 20 Vict. c. 97.	The Mercantile Law Amendment Act, 1856.	Section four.
28 & 29 Vict. c. 86.	An Act to amend the law of partnership.	The whole Act.

APPENDIX G

Limited Partnerships Act, 1907.

[7 Edw. 7. Ch. 24.]

ARRANGEMENT OF SECTIONS.

A.D. 1907.

Section.

1. Short title.
2. Commencement of Act.
3. Interpretation of terms.
4. Definition and constitution of limited partnership.
5. Registration of limited partnership required.
6. Modifications of general law in case of limited partnerships.
7. Law as to private partnerships to apply where not excluded by this Act.
8. Manner and particulars of registration.
9. Registration of changes in partnerships.
10. Advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner.
11. Ad valorem stamp duty on contributions by limited partners.
12. Making false returns to be misdemeanour.
13. Registrar to file statement and issue certificate of registration.
14. Register and index to be kept.
15. Registrar of joint stock companies to be registrar under Act.
16. Inspection of statements registered.
17. Power to Board of Trade to make rules.

Chapter 24.

An Act to establish Limited Partnerships.

[28th August 1907.] A.D. 1907.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited for all purposes as the Limited Partnerships Act, 1907.

Commencement of Act.

2. This Act shall come into operation on the first day of January one thousand nine hundred and eight.

Interpretation of terms.

3. In the construction of this Act the following words and expressions shall have the meanings respectively assigned to them in this section, unless there be something in the subject or context repugnant to such construction :—

53 & 54 Vict. c. 39.

"Firm," "firm name," and "business" have the same meanings as in the Partnership Act, 1890 :

"General partner" shall mean any partner who is not a limited partner as defined by this Act.

Definition and constitution of limited partnership.

4.—(1) From and after the commencement of this Act limited partnerships may be formed in the manner and subject to the conditions by this Act provided.

(2) A limited partnership shall not consist, in the case of a partnership carrying on the business of banking, of more than ten persons, and, in the case of any other partnership, of more than twenty persons, and must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed.

(3) A limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back.

(4) A body corporate may be a limited partner.

Registration of limited partnership required.

5. Every limited partnership must be registered as such in accordance with the provisions of this Act, or in default thereof it shall be deemed to be a general partnership and every limited partner shall be deemed to be a general partner.

Modifications of general law in case of limited partnerships.

6.—(1) A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm :

Provided that a limited partner may by himself or his agent at any time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with the partners thereon.

If a limited partner takes part in the management of the partnership business he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner.

(2) A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the court unless the lunatic's share cannot be otherwise ascertained and realised.

(3) In the event of the dissolution of a limited partnership its affairs shall be wound up by the general partners unless the court otherwise orders.

(4) Applications to the court to wind up a limited partnership shall be by petition under the Companies Acts, 1862 to 1900, and the provisions of those Acts relating to the winding up of companies by the court and of the rules made thereunder (including provisions as to fees) shall, subject to such modifications (if any) as the Lord Chancellor, with the concurrence of the President of the Board of Trade, may by rules provide, apply to the winding up by the court of limited partnerships, with the substitution of general partners for directors.

(5) Subject to any agreement expressed or implied between the partners—

(*a*) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners ;

(*b*) A limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor ;

(*c*) The other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt ;

(*d*) A person may be introduced as a partner without the consent of the existing limited partners ;

(*e*) A limited partner shall not be entitled to dissolve the partnership by notice.

Law as to private partnerships to apply where not excluded by this Act. 53 & 54 Vict. c. 39.

7. Subject to the provisions of this Act, the Partnership Act, 1890, and the rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last-mentioned Act, shall apply to limited partnerships.

Manner and particulars of registration.

8. The registration of a limited partnership shall be effected by sending by post or delivering to the registrar at the register office in that part of the United Kingdom in which the principal place of business of the limited partnership is situated or proposed to be situated a statement signed by the partners containing the following particulars :—

(*a*) The firm name ;

(*b*) The general nature of the business ;

(*c*) The principal place of business ;

(*d*) The full name of each of the partners ;

(*e*) The term, if any, for which the partnership is entered into, and the date of its commencement ;

(*f*) A statement that the partnership is limited, and the description of every limited partner as such ;

(*g*) The sum contributed by each limited partner, and whether paid in cash or how otherwise.

Registration of changes in partnerships.

9.—(1) If during the continuance of a limited partnership any change is made or occurs in—

(*a*) the firm name,

(*b*) the general nature of the business,

(*c*) the principal place of business,

(*d*) the partners or the name of any partner,

(*e*) the term or character of the partnership,

(*f*) the sum contributed by any limited partner,

(*g*) the liability of any partner by reason of his becoming a limited instead of a general partner or a general instead of a limited partner,

a statement, signed by the firm, specifying the nature of the change shall within seven days be sent by post or delivered to the registrar at the register office in that part of the United Kingdom in which the partnership is registered.

(2) If default is made in compliance with the requirements of this section each of the general partners shall on conviction under the Summary Jurisdiction Acts be liable to a fine not exceeding one pound for each day during which the default continues.

Advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner.

10.—(1) Notice of any arrangement or transaction under which any person will cease to be a general partner in any firm, and will become a limited partner in that firm, or under which the share of a limited partner in a firm will be assigned to any person, shall be forthwith advertised in the Gazette, and until notice of the arrangement or transaction is so advertised, the arrangement or transaction shall, for the purposes of this Act, be deemed to be of no effect.

(2) For the purposes of this section, the expression "the Gazette" means -

In the case of a limited partnership registered in England, the London Gazette ;

In the case of a limited partnership registered in Scotland, the Edinburgh Gazette ;

In the case of a limited partnership registered in Ireland, the Dublin Gazette.

Ad valorem stamp duty on contributions by limited partners.

11. The statement of the amount contributed by a limited partner, and a statement of any increase in that amount, sent to the registrar for registration under this Act, shall be charged with an ad valorem stamp duty of five shillings for every one hundred pounds, and any fraction of one hundred pounds over any multiple of one hundred pounds, of the amount so contributed, or of the increase of that amount, as the case may be ; and in default of payment of stamp duty thereon as herein required, the duty with interest thereon at the rate of five per cent. per annum from the date of delivery of such statement shall be a joint and several debt to His Majesty, recoverable from the partners, or any of them, in the said statements named, or, in the case of an increase, from all or any of the said partners whose discontinuance in the firm shall not, before the date of delivery of such statement of increase, have been duly notified to the registrar.

Making false returns to be misdemeanour.

12. Every one commits a misdemeanour, and shall be liable to imprisonment with hard labour for a term not exceeding two years, who makes, signs, sends, or delivers for the purpose of registration under this Act any false statement known by him to be false.

Registrar to file statement and issue certificate of registration.

13. On receiving any statement made in pursuance of this Act the registrar shall cause the same to be filed, and he shall send by post to the firm from whom such statement shall have been received a certificate of the registration thereof.

Register and index to be kept.

14. At each of the register offices hereinafter referred to the registrar shall keep, in proper books to be provided for the purpose, a register and an index of all the limited partnerships registered as aforesaid, and of all the statements registered in relation to such partnerships.

Registrar of joint stock companies to be registrar under Act.

15. The registrar of joint stock companies shall be the registrar of limited partnerships, and the several offices for the registration of joint stock companies in London, Edinburgh, and Dublin shall be the offices for the registration of limited partnerships carrying on business within those parts of the United Kingdom in which they are respectively situated.

Inspection of statements registered.

16.—(1) Any person may inspect the statements filed by the registrar in the register offices aforesaid, and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection ; and any person may require a certificate of the registration of any limited partnership, or a copy of or extract from any registered statement, to be certified by the registrar, and there shall be paid for such certificate of registration, certified copy, or extract such fees as the Board of Trade may appoint, not exceeding two shillings for the certificate of registration, and not exceeding sixpence for each folio of seventy-two words, or in Scotland for each sheet of two hundred words.

(2) A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars (whom it shall not be necessary to prove to be the registrar or assistant registrar) shall, in all legal proceedings, civil or criminal, and in all cases whatsoever be received in evidence.

Power to Board of Trade to make rules.

17. The Board of Trade may make rules (but as to fees with the concurrence of the Treasury) concerning any of the following matters :—

(*a*) The fees to be paid to the registrar under this Act, so that they do not exceed in the case of the original registration of a limited partnership the sum of two pounds, and in any other case the sum of five shillings;

(*b*) The duties or additional duties to be performed by the registrar for the purposes of this Act;

(*c*) The performance by assistant registrars and other officers of acts by this Act required to be done by the registrar;

(*d*) The forms to be used for the purposes of this Act;

(*e*) Generally the conduct and regulation of registration under this Act and any matters incidental thereto.

APPENDIX H

Bankruptcy Act, 1914.

[4 & 5 Geo. 5. Ch. 59.]

A.D. 1914.

ARRANGEMENT OF SECTIONS.

PART I.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE.

Acts of Bankruptcy.

Section.
1. Acts of bankruptcy.
2. Bankruptcy notices.

Receiving Order.

3. Jurisdiction to make receiving order.
4. Conditions on which creditor may petition.
5. Proceedings and order on creditor's petition.
6. Debtor's petition and order thereon.
7. Effect of receiving order.
8. Power to appoint interim receiver.
9. Power to stay pending proceedings.
10. Power to appoint special manager.
11. Advertisement of receiving order.
12. Power to rescind receiving order in certain cases.

Proceedings consequent on Order.

13. First and other meetings of creditors.
14. Debtor's statement of affairs.

Public Examination of Debtor.

15. Public examination of debtor.

Composition or Scheme of Arrangement.

16. Compositions and schemes of arrangement.
17. Effect of composition or scheme.

Adjudication of Bankruptcy.

18. Adjudication of bankruptcy where composition not accepted or approved.
19. Appointment of trustee.
20. Committee of inspection.
21. Power to accept composition or scheme after bankruptcy adjudication.

Control over Person and Property of Debtor.

Section.
22. Duties of debtor as to discovery and realisation of property.
23. Arrest of debtor under certain circumstances.
24. Re-direction of debtor's letters.
25. Enquiry as to debtor's conduct, dealings, and property.
26. Discharge of bankrupt.
27. Fraudulent settlements.
28. Effect of order of discharge.
29. Power for court to annul adjudication in certain cases.

PART II.

ADMINISTRATION OF PROPERTY.

Proof of Debts.

30. Description of debts provable in bankruptcy.
31. Mutual credit and set-off.
32. Rules as to proof of debts.
33. Priority of debts.
34. Preferential claim in case of apprenticeship.
35. Landlord's power of distress in case of bankruptcy.
36. Postponement of husband's and wife's claims.

Property available for Payment of Debts.

37. Relation back of trustee's title.
38. Description of bankrupt's property divisible amongst creditors.
39. Provisions as to second bankruptcy.

Effect of Bankruptcy on antecedent and other Transactions.

40. Restriction of rights of creditor under execution or attachment.
41. Duties of sheriff as to goods taken in execution.
42. Avoidance of certain settlements.
43. Avoidance of general assignments of book debts unless registered.
44. Avoidance of preference in certain cases.
45. Protection of bonâ fide transactions without notice.
46. Validity of certain payments to bankrupt and assignee.
47. Dealings with undischarged bankrupt.

Realisation of Property.

48. Possession of property by trustee.
49. Seizure of property of bankrupt.
50. Sequestration of ecclesiastical benefice.
51. Appropriation of portion of pay or salary to creditors.
52. Appropriation of income of property restrained from anticipation.
53. Vesting and transfer of property.
54. Disclaimer of onerous property.
55. Powers of trustee to deal with property.
56. Powers exerciseable by trustee with permission of committee of inspection.
57. Power to allow bankrupt to manage property.
58. Allowance to bankrupt for maintenance or service.
59. Right of trustee to inspect goods pawned, &c.
60. Limitation of trustee's powers in relation to copyright.
61. Protection of official receivers and trustees from personal liability in certain cases.

Distribution of Property.

Section.
62. Declaration and distribution of dividends.
63. Joint and separate dividends.
64. Provision for creditors residing at a distance, &c.
65. Right of creditor who has not proved debt before declaration of a dividend
66. Interest on debts.
67. Final dividend.
68. No action for dividend.
69. Right of bankrupt to surplus.

PART III.

OFFICIAL RECEIVERS AND STAFF OF BOARD OF TRADE.

70. Official receivers of debtors' estates.
71. Deputy for official receiver.
72. Status of official receiver.
73. Duties of official receiver as regards the debtor's conduct.
74. Duties of official receiver as to debtor's estate.
75. Power for Board of Trade to appoint officers.

PART IV.

TRUSTEES IN BANKRUPTCY.

Official Name.

76. Official name of trustee.

Appointment.

77. Power to appoint joint or successive trustees.
78. Proceedings in case of vacancy in office of trustee.

Control over Trustee.

79. Discretionary powers of trustee and control thereof.
80. Appeal to court against trustee.
81. Control of Board of Trade over Trustees.

Remuneration and Costs.

82. Remuneration of trustee.
83. Allowance and taxation of costs.

Receipts, Payments, Accounts, Audit.

84. Trustee to furnish list of creditors.
85. Trustee to furnish statement of accounts.
86. Books to be kept by trustee.
87. Annual statement of proceedings.
88. Trustee not to pay into private account.
89. Payment of money into Bank of England.
90. Investment of surplus funds.
91. Certain receipts and fees to be applied in aid of expenditure.
92. Audit of trustee's accounts.

Vacation of Office by Trustee.

93. Release of trustee.
94. Office of trustee vacated by insolvency.
95. Removal of trustee.

PART V.

CONSTITUTION, PROCEDURE, AND POWERS OF COURT.

Jurisdiction.

Section.
96. Jurisdiction to be exercised by High Court and county courts.
97. Transaction of bankruptcy business by special judge of High Court.
98. Petition, where to be presented.
99. Definition of London bankruptcy district.
100. Transfer of proceedings from court to court.
101. Exercise in chambers of High Court jurisdiction.
102. Jurisdiction in bankruptcy of registrar.
103. Powers of county court.
104. Board of Trade to make payments in accordance with directions of court.
105. General power of bankruptcy courts.
106. Notification of bankruptcy of peers and members of Parliament.

Judgment Debtors.

107. Judgment debtor's summons to be bankruptcy business.

Appeals.

108. Appeals in bankruptcy.

Procedure.

109. Discretionary powers of court.
110. Consolidation of petitions.
111. Power to change carriage of proceedings.
112. Continuance of proceedings on death of debtor.
113. Power to stay proceedings.
114. Power to present petition against one partner.
115. Power to dismiss petition against some respondents only.
116. Property of partners to be vested in same trustee.
117. Actions by trustee and bankrupt's partners.
118. Actions on joint contracts.
119. Proceedings in partnership name.

Officers.

120. Disabilities of officers.

Orders and Warrants of Court.

121. Enforcement of orders of courts throughout the United Kingdom.
122. Courts to be auxiliary to each other.
123. Warrants of bankruptcy courts.
124. Commitment to prison.

PART VI.

SUPPLEMENTAL PROVISIONS.

Application of Act.

125. Married women.
126. Exclusion of companies.
127. Application to limited partnerships.
128. Privilege of Parliament.
129. Application of Act in case of small estates.
130. Administration in bankruptcy of estate of person dying insolvent.
131. Outstanding bankruptcies under earlier enactments.

General Rules.

132. Power to make general rules.

Fees, Salaries, Expenditure, and Returns.

Section.
133. Fees and remuneration.
134. Judicial salaries, &c.
135. Annual accounts of receipts and expenditure in respect of bankruptcy proceedings.
136. Returns by bankruptcy officers.

Evidence.

137. Gazette to be evidence.
138. Evidence of proceedings at meetings of creditors.
139. Evidence of proceedings in bankruptcy.
140. Swearing of affidavits.
141. Death of debtor or witness.
142. Bankruptcy courts to have seals.
143. Certificate of appointment of trustee.
144. Proceedings of Board of Trade.

Miscellaneous.

145. Computation of time.
146. Service of notices.
147. Formal defect not to invalidate proceedings.
148. Exemption of deeds, &c., from stamp duty.
149. Acting of corporations, partners, &c.
150. Construction of Acts mentioning commission of bankruptcy, &c.
151. Certain provisions to bind Crown.
152. Saving for existing rights of audience.

Unclaimed Funds or Dividends.

153. Unclaimed and undistributed dividends or funds under this and former Acts.

PART VII.

BANKRUPTCY OFFENCES.

154. Fraudulent debtors.
155. Undischarged bankrupt obtaining credit.
156. Frauds by bankrupts, &c.
157. Bankrupt guilty of gambling, &c.
158. Bankrupt failing to keep proper accounts.
159. Bankrupt absconding with property.
160. False claim, &c.
161. Order by court for prosecution on report of trustee.
162. Criminal liability after discharge or composition.
163. Power for court to commit for trial.
164. Trial and punishment of offences.
165 Public Prosecutor to act in certain cases.
166. Evidence as to frauds by agents.

PART VIII.

GENERAL.

Interpretation.

167. Interpretation of terms.

Repeals.

168. Repeal of enactments and savings.
169. Short title, extent, and commencement.

SCHEDULES.

Chapter 59.

An Act to consolidate the Law relating to Bankruptcy. A.D. 1914

[10th August 1914.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Part I.

Proceedings from Act of Bankruptcy to Discharge.

Acts of Bankruptcy.

Acts of bankruptcy.

1.—(1.) A debtor commits an act of bankruptcy in each of the following cases :—

(*a*) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally ;

(*b*) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof ;

(*c*) If in England or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt ;

(*d*) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house ;

(*e*) If execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days :

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days ;

(*f*) If he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself ;

(*g*) If a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in England, or, by leave of the court, elsewhere, a bankruptcy notice under this Act, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counter-claim set off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained :

For the purposes of this paragraph and of section two of this Act, any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgment or final order.

(*h*) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

(2) In this Act, the expression "a debtor," unless the context otherwise implies, includes any person, whether a British subject or not, who at the time when any act of bankruptcy was done or suffered by him—

(*a*) was personally present in England; or

(*b*) ordinarily resided or had a place of residence in England; or

(*c*) was carrying on business in England, personally, or by means of an agent or manager; or

(*d*) was a member of a firm or partnership which carried on business in England.

Bankruptcy notices.

2. A bankruptcy notice under this Act shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall state the consequences of non-compliance with the notice, and shall be served in the prescribed manner:

Provided that a bankruptcy notice—

(i) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor;

(ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement; but, if the debtor does not give such notice, he shall be deemed to have complied with the bankruptcy notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

Receiving Order.

Jurisdiction to make receiving order.

3. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.

Conditions on which creditor may petition.

4.—(1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

(*a*) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to fifty pounds, and

(*b*) the debt is a liquidated sum, payable either immediately or at some certain future time, and

(*c*) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition, and

(*d*) the debtor is domiciled in England, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business, in England, or (except in the case of a person domiciled in Scotland or Ireland or a firm or partnership having its principal place of business in Scotland or Ireland) has carried on business in England, personally or by means of an agent or manager, or (except as aforesaid) is or within the said period has been a member of a firm or partnership of persons which has carried on business in England by means of a partner or partners, or an agent or manager,

nor, where a deed of arrangement has been executed, shall a creditor be entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of

the deed, in cases where he is prohibited from so doing by the law for the time being in force relating to deeds of arrangement.

(2) If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor.

Proceedings and order on creditor's petition.

5.—(1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner.

(2) At the hearing the court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with the proof, may make a receiving order in pursuance of the petition.

(3) If the court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the court may dismiss the petition.

(4) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, or sum ordered to be paid, the court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment or order.

(5) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court on such security (if any) being given as the court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(6) Where proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

(7) A creditor's petition shall not, after presentment, be withdrawn without the leave of the court.

Debtor's petition and order thereon.

6.—(1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order.

(2) A debtor's petition shall not, after presentment, be withdrawn without the leave of the court.

Effect of receiving order.

7.—(1) On the making of a receiving order an official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose.

(2.) But this section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

Power to appoint interim receiver.

8. The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

Power to stay pending proceedings.

9.—(1) The court may, at any time after the presentation of a bankruptcy petition, stay any action, execution, or other legal process against the property or person of the debtor, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

(2) Where the court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the court, by post to the address for service of the plaintiff or other party prosecuting such proceeding.

Power to appoint special manager.

10.—(1) The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.

(2) The special manager shall give security and account in such manner as the Board of Trade may direct.

(3) The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or, in default of any such resolution, as may be prescribed.

Advertisement of receiving order.

11. Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, the court by which the order is made, and the date of the petition, shall be gazetted and advertised in a local paper in the prescribed manner.

Power to rescind receiving order in certain cases.

12. If in any case where a receiving order has been made on a bankruptcy petition it appears to the court by which the order was made, upon an application by the official receiver, or any creditor or other person interested, that a majority of the creditors in number and value are resident in Scotland or in Ireland, and that from the situation of the property of the debtor, or other causes, his estate and effects ought to be distributed among the creditors under the law relating to bankruptcy in Scotland or Ireland, the court, after such inquiry as it may think fit, may rescind the receiving order and stay all proceedings on, or dismiss the petition upon such terms, if any, as the court may think fit.

Proceedings consequent on Order.

First and other meetings of creditors.

13.—(1) As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

(2) With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the First Schedule to this Act shall be observed.

Debtor's statement of affairs.

14.—(1) Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts and liabilities, the names,

residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be so submitted within the following times, namely :—

(i) If the order is made on the petition of the debtor, within three days from the date of the order :

(ii) If the order is made on the petition of a creditor, within seven days from the date of the order :

but the court may, in either case for special reasons, extend the time.

(3) If the debtor fails without reasonable excuse to comply with the requirements of this section, the court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or official receiver.

Public Examination of Debtor.

Public examination of debtor.

15.—(1) Where the court makes a receiving order, it shall, save as in this Act provided, hold a public sitting, on a day to be appointed by the court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

(3) The court may adjourn the examination from time to time.

(4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

(5) The official receiver shall take part in the examination of the debtor ; and for the purpose thereof, if specially authorised by the Board of Trade, may employ a solicitor with or without counsel.

(6) If a trustee is appointed before the conclusion of the examination, he may take part therein.

(7) The court may put such questions to the debtor as it may think expedient.

(8) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. Such notes of the examination as the court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter, save as in this Act provided, be used in evidence against him ; they shall also be open to the inspection of any creditor at all reasonable times.

(9) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.

(10) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the court makes him unfit to attend his public examination, the court may make an order dispensing with such examination, or directing that the debtor be examined on such terms, in such manner, and at such place as to the court seems expedient.

Composition or Scheme of Arrangement.

Compositions and schemes of arrangement.

16.—(1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of

affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.

(2) In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon ; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the court shall be binding on all the creditors.

(3) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

(5) The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(6) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(7) For the purpose of approving a composition or scheme by joint debtors, the court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence from the United Kingdom.

(8) The court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(9) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the court is required, where the debtor is adjudged bankrupt, to refuse his discharge, the court shall refuse to approve the proposal.

(10) If any facts are proved on proof of which the court would be required either to refuse, suspend or attach conditions to the debtor's discharge were he adjudged bankrupt, the court shall refuse to approve the proposal, unless it provides reasonable security for the payment of not less than five shillings in the pound on all the unsecured debts provable against the debtor's estate.

(11) In any other case the court may either approve or refuse to approve the proposal.

(12) If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the court.

(13) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

(14) A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(15) The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.

(16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the official receiver or the trustee or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme.

Where a debtor is adjudged bankrupt under this subsection, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

(17) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section twenty-five and Part IV. of this Act shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt," and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme.

(18) Part II. of this Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt," and "order of adjudication," as in the last preceding subsection.

(19) No composition or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(20) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

Effect of composition or scheme.

17. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be released by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Adjudication of Bankruptcy.

Adjudication of bankruptcy where composition not accepted or approved.

18.—(1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor or such further time as the court may allow, the court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in a trustee.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, the date of the adjudication, and the court by which the adjudication is made, shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall, for the purposes of this Act, be the date of the adjudication.

Appointment of trustee.

19.—(1) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.

A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.

(2) The person so appointed shall give security in manner prescribed to the satisfaction of the Board of Trade, and the Board, if satisfied with the security, shall certify that his appointment has been duly made, unless they object to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connexion with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.

(3) Provided that, where the Board make any such objection they shall, if so requested by a majority in value of the creditors, notify the objection to the High Court, and thereupon the High Court may decide on its validity.

(4) The appointment of a trustee shall take effect as from the date of the certificate.

(5) The official receiver shall not, save as by this Act provided, be the trustee of the bankrupt's property.

(6) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of there being negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept or of the court to approve, the composition or scheme, the official receiver shall report the matter to the Board of Trade, and thereupon the Board of Trade shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.

(7) Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and, on the appointment being made and certified, the person appointed shall become trustee in the place of the person appointed by the Board of Trade.

(8) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

Committee of inspection.

20.—(1) The creditors qualified to vote may, at their first or any subsequent meeting by resolution, appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.

(2) The committee of inspection shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications—

(*a*) that of being a creditor or the holder of a general proxy or general power of attorney from a creditor, provided that no creditor and no holder of a general proxy or general power of attorney from a creditor shall be qualified to act as a member of the committee of inspection until the creditor has proved his debt and the proof has been admitted; or

(*b*) that of being a person to whom a creditor intends to give a general proxy or general power of attorney: provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney

and until the creditor has proved his debt and the proof has been admitted.

(3) The committee of inspection shall meet at such times as they shall from time to time appoint, and, failing such appointment, at least once a month ; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(4) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(5) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee.

(6) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.

(7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.

(8) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor or other person eligible as above to fill the vacancy.

(9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body ; and, where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five.

(10) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the trustee.

Power to accept composition or scheme after bankruptcy adjudication.

21.—(1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the bankrubtcy, or for a scheme of arrangement of the bankrupt's affairs ; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

(2) If the court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the court may appoint, on such terms, and subject to such conditions, if any, as the court may declare.

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

Control over Persons and Property of Debtor.

Duties of debtor as to discovery and realisation of property.

22.—(1) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

(2) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee, or any creditor or person interested.

(3) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

(4) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorised by the court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

Arrest of debtor under certain circumstances.

23.—(1) The court may, by warrant addressed to any constable or prescribed officer of the court, cause a debtor to be arrested, and any books, papers, money and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the court may order under the following circumstances—

(*a*) If, after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable reason for believing that he has absconded, or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him :

(*b*) If, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy :

(*c*) If, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of five pounds, without the leave of the official receiver or trustee :

(*d*) If, without good cause shown, he fails to attend any examination ordered by the court :

Provided that no arrest upon a bankruptcy notice shall be valid and protected, unless the debtor before or at the time of his arrest is served with such bankruptcy notice.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

Re-direction of debtor's letters.

24. Where a receiving order is made against a debtor, the court, on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding three months, as the court thinks fit, post letters, telegrams, and other postal packets, addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, sent or delivered by the Postmaster-General, or the officers acting under him, to the official receiver, or the trustee, or otherwise as the court directs, and the same shall be done accordingly.

Enquiry as to debtor's conduct, dealings, and property.

25.—(1) The court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The court may examine on oath, either by word or mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings, or property.

(4) If any person on examination before the court admits that he is indebted to the debtor, the court may, on the application of the official receiver or trustee, order him to pay to the official receiver or trustee, at such time and in such manner as to the court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.

(5) If any person on examination before the court admits that he has in his possession any property belonging to the debtor, the court may, on the application of the official receiver or trustee, order him to deliver to the official receiver or trustee such property, or any part thereof, at such time, and in such manner, and on such terms, as to the court may seem just.

(6) The court may, if it thinks fit, order that any person who if in England would be liable to be brought before it under this section shall be examined in Scotland or Ireland, or in any other place out of England.

Discharge of bankrupt.

26.—(1) A bankrupt may, at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall, except when the court in accordance with rules under this Act otherwise directs, be heard in open court.

(2) On the hearing of the application the court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property :

Provided that the court shall refuse the discharge in all cases where the bankrupt has committed any misdemeanour under this Act, or any enactment repealed by this Act, or any other misdemeanour connected with his bankruptcy, or any felony connected with his bankruptcy, unless

for special reasons the court otherwise determines, and shall, on proof of any of the facts herinafter mentioned, either—

(i) refuse the discharge ; or

(ii) suspend the discharge for a period of not less than two years : provided that the period may be less than two years, if the only fact proved of those hereinafter mentioned is that his assets are not of a value equal to ten shillinsgs in the pound on the amount of his unsecured liabilities ; or

(iii) suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors ; or

(iv) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after acquired property of the bankrupt in such manner and subject to such conditions as the court may direct ; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts :

Provided that, if at any time after the expiration of two years from the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

(3) The facts hereinafter referred to are—

(*a*) That the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible :

(*b*) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy :

(*c*) That the bankrupt has continued to trade after knowing himself to be insolvent :

(*d*) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it :

(*e*) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities :

(*f*) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs :

(*g*) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him :

(*h*) That the bankrupt has, within three months preceding the date of the receiving order, incurred unjustifiable expense by bringing a frivolous or vexatious action :

(*i*) That the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors :

(*j*) That the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities :

(*k*) That the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors :

(*l*) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4) With a view to removing any statutory disqualification on account of bankruptcy which is removed if the bankrupt obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part, the court may, if it thinks fit, grant such a certificate, but a refusal to grant such a certificate shall be subject to appeal.

(5) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, on amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the official receiver or the trustee shall be primâ facie evidence of the amount of such liabilities.

(6) For the purposes of this section, the report of the official receiver shall be primâ facie evidence of the statements therein contained.

(7) Notice of the appointment by the court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court may hear the official receiver and the trustee, and may also hear any creditor. At the hearing the court may put such questions to the debtor and receive such evidence as it may think fit.

(8) The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

(9) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and, if he fails to do so, he shall be guilty of a contempt of court ; and the court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge but before its revocation.

Fraudulent settlements.

27. In either of the following cases ; that is to say—

(i) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement ; or

(ii) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife) ;

if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Effect of order discharge.

28.—(1) An order of discharge shall not release the bankrupt—

(*a*) from any debt on a recognisance nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of

any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Treasury certify in writing their consent to his being discharged therefrom; or

(*b*) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; or

(*c*) from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

(2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(3) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge.

(4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

Power for court to annul adjudication in certain cases.

29.—(1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, on the application of any person interested, by order annul the adjudication.

(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the court may appoint, or, in default of any such appointment, revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court may declare by order.

(3) Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local paper.

(4) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into court.

Part II.

Administration of Property.

Proof of Debts.

Description of debts provable in bankruptcy.

30.—(1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy.

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

(4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the court.

(6) If, in the opinion of the court, the value of the debt or liability is incapable of being fairly estimated, the court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.

(7) If, in the opinion of the court, the value of the debt or liability is capable of being fairly estimated, the court may direct the value to be assessed before the court itself without the intervention of a jury, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8) "Liability" shall, for the purposes of this Act, include—

(*a*) any compensation for work or labour done;

(*b*) any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor;

(*c*) generally, any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money or money's worth; whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

Mutual credit and set-off.

31. Where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under this Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

Rules as to proof of debts.

32. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule to this Act, the rules in that schedule shall be observed.

Priority of debts.

33.—(1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

(*a*) All parochial or other local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax, assessed on the bankrupt up to the fifth day of April next before the date of the

receiving order, and not exceeding in the whole one year's assessment;

(*b*) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding fifty pounds;

(*c*) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt during two months before the date of the receiving order: Provided that, where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, the priority under this section shall extend to the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order;

6 Edw. 7, c. 58.

(*d*) All amounts, not exceeding in any individual case one hundred pounds, due in respect of compensation under the Workmen's Compensation Act, 1906, the liability wherefor accrued before the date of the receiving order, subject nevertheless to the provisions of section five of that Act; and

1 & 2 Geo. 5. c. 55.

(*e*) All contributions payable under the National Insurance Act, 1911, by the bankrupt, in respect of employed contributors or workmen in an insured trade during four months before the date of the receiving order.

(2) The foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

(5) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

(6) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(7) Subject to the provisions of this Act, all debts proved in the bankruptcy shall be paid pari passu.

(8) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of four pounds per centum per annum on all debts proved in the bankruptcy.

53 & 54 Vict. c. 39. 59 & 60 Vict. c. 25. 26 & 27 Vict. c. 87.

(9) Nothing in this section shall alter the effect of section three of the Partnership Act, 1890, or shall prejudice the provisions of the Friendly Societies Act, 1896, or of section fourteen of the Trustee Savings Banks Act, 1863, or the provisions of any enactment relating to deeds of arrangement respecting the payment of expenses incurred by the trustee under a deed of arrangement which has been avoided by the bankruptcy of the debtor.

Preferential claim in case of apprenticeship.

34.—(1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and, if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Landlord's power of distress in case of bankruptcy.

35.—(1) The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that, if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for six months' rent accrued due prior to the date of the order of adjudication and shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

(2) Where any goods of a debtor have been taken in execution, the limit on the amount of rent which the party at whose suit the execution is sued out is liable to pay to the landlord under section one of the Landlord and Tenant Act, 1709, or which the landlord is entitled to be paid under section one hundred and sixty of the County Courts Acts, 1888, shall, unless notice of claim for rent due has been served on the sheriff or bailiff or other officer levying the execution by or on behalf of the landlord before the commencement of the debtor's bankruptcy, be six months' rent, instead of one year's rent, and the rights of the landlord under the said provisions shall not extend to any claim for rent payable in respect of any period subsequent to the date of such notice, unless such notice was served as aforesaid before the commencement of the debtor's bankruptcy.

8 Anne, c. 18. 51 & 52 Vict. c. 43.

(3) Nothing in the last preceding subsection shall be construed as imposing any liability on the sheriff, bailiff or other officer levying the execution, or on the person at whose suit the execution was sued out, to account for any sum actually paid to the landlord by him before notice was served on him that a receiving order had been made against the debtor, but the landlord shall be liable to pay to the trustee in the bankruptcy any sum he may have received from such sheriff, bailiff, officer or person as aforesaid in excess of the amount which he was entitled to be paid, without prejudice, however, to the right of the landlord to prove for the amount of such excess.

Postponement of husband's and wife's claim.

36.—(1) Where a married woman has been adjudged bankrupt, her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted by him to his wife for the purposes of her trade or business until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

(2) Where the husband of a married woman has been adjudged bankrupt, any money or other estate of such woman lent or entrusted

by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of his estate, and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or other estate until all claims of the other creditors of her husband for valuable consideration in money or money's worth have been satisfied.

Property available for Payment of Debts.

Relation back of trustee's title.

37.—(1) The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition ; but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

(2) Where a receiving order is made against a judgment debtor in pursuance of section one hundred and seven of this Act, the bankruptcy of the debtor shall be deemed to have relation back to, and to commence at, the time of the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next preceding the date of the order.

Description of bankrupt's property divisible amongst creditors.

38. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars :—

(1) Property held by the bankrupt on trust for any other person ;

(2) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole :

But it shall comprise the following particulars—

(*a*) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge ; and

(*b*) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice ; and

(*c*) All goods being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof ; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

Provisions as to second bankruptcy.

39.—(1) In the event of a second or subsequent receiving order being made against a bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the official receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of section forty-seven of this Act) vest in the trustee

in the subsequent bankruptcy, but any unsatisfied balance of the debts provable under the last preceding bankruptcy may be proved in the subsequent bankruptcy by the trustee in the last preceding bankruptcy.

(2) Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt, he shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and, if on the subsequent petition an order of adjudication is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy.

Effect of Bankruptcy on antecedent and other Transactions.

Restriction of rights of creditor under execution or attachment.

40.—(1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

(3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall, in all cases, acquire a good title to them against the trustee in bankruptcy.

Duties of sheriff as to goods taken in execution.

41.—(1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where, under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver or, as the case may be, to the trustee, who shall be entitled to retain it as against the execution creditor.

Avoidance of certain settlements.

42.—(1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the

settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband, or children, or for the future settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

(3) Any payment of money (not being payment of premiums on a policy of life assurance) or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid shall be void against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove either—

(*a*) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy; or

(*b*) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or

(*c*) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract and was made within three months after the money or property came into the possession or under the control of the settlor;

but, in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the commencement of the bankruptcy.

(4) "Settlement" shall, for the purposes of this section, include any conveyance or transfer of property.

Avoidance of general assignments of book debts unless registered.

41 & 42 Vict. c. 31.

43.—(1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money, and the provisions of the Bills of Sale Act, 1878, with respect to the registration of bills of sale shall apply accordingly, subject to such necessary modifications as may be made by rules under that Act:

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made bonâ fide and for value, or in any assignment of assets for the benefit of creditors generally.

(2) For the purposes of this section, "assignment" includes assignment by way of security and other charges on book debts.

Avoidance of preference in certain cases.

44.—(1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or of any person in trust for any creditor, with a view of giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

(3) Where a receiving order is made against a judgment debtor in pursuance of section one hundred and eight of this Act, this section shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

Protection of bonâ fide transactions without notice.

45. Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy—

(*a*) Any payment by the bankrupt to any of his creditors;

(*b*) Any payment or delivery to the bankrupt;

(*c*) Any conveyance or assignment by the bankrupt for valuable consideration;

(*d*) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration:

Provided that both the following conditions are complied with, namely—

(i) that the payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and

(ii) that the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Validity of certain payments to bankrupt and assignee.

46. A payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, shall, notwithstanding anything in this Act, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date on which the receiving order is made and without notice of the presentation of a bankruptcy petition, and is either pursuant to the ordinary course of business or otherwise bonâ fide.

Dealings with undischarged bankrupt.

47.—(1) All transactions by a bankrupt with any person dealing with him bonâ fide and for value, in respect of property, whether real or personal, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Act is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

This subsection shall apply to transactions with respect to real property completed before the first day of April nineteen hundred and fourteen, in any case where there has not been any intervention by the trustee before that date.

For the purposes of this subsection, the receipt of any money, security or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

(2) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the trustee in the bankruptcy or the Board of Trade of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the court or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee.

Realisation of Property.

Possession of property by trustee.

48.—(1) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

(2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the High Court, and the court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the property of the bankrupt is of copyhold or customary tenure, or is any like property passing by surrender and admittance or in any similar manner, the trustee shall not be compellable to be admitted to the property, but may deal with it in the same manner as if it had been capable of being and had been duly surrendered or otherwise conveyed to such uses as the trustee may appoint; and any appointee of the trustee shall be admitted to or otherwise invested with the property accordingly.

(5) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.

(6) Subject to the provisions of this Act with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, or agent of a bankrupt shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee.

Seizure of property of bankrupt.

49. Any person acting under warrant of the court may seize any part of the property of a bankrupt, or of a debtor against whom a receiving order has been made, in the custody or possession of the bankrupt or the debtor, or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt or the debtor, where the bankrupt or the debtor is supposed to be, or any building or receptacle of the bankrupt or the debtor where any of his property is supposed to be; and where the court is satisfied that there is reason to believe that property of a bankrupt, or of a debtor against whom a receiving order has been made, is concealed in a house or place not belonging to him, the court may, if it thinks fit, grant a search warrant to any constable or officer of the court, who may execute it according to its tenor,

Sequestration of ecclesiastical benefice.

50.—(1) Where a bankrupt is a beneficed clergyman, the trustee may apply for a sequestration of the profits of the benefice, and the certificate of the appointment of the trustee shall be sufficient authority for the granting of a sequestration without any writ or other proceeding, and the same shall accordingly be issued as on a writ of levari facias founded on a judgment against the bankrupt, and shall have priority over any other sequestration issued after the commencement of the bankruptcy in respect of a debt provable in the bankruptcy, except a sequestration issued before the date of the receiving order by or on behalf of a person who at the time of the issue thereof had not notice of an available act of bankruptcy committed by the bankrupt.

(2) The bishop of the diocese in which the benefice is situate may, if he thinks fit, appoint to the bankrupt such or the like stipend as he might by law have appointed to a curate duly licensed to serve the benefice in case the bankrupt had been non-resident, and the sequestrator shall pay the sum so appointed out of the profits of the benefice to the bankrupt by quarterly instalments while he performs the duties of the benefice.

(3) The sequestrator shall also pay out of the profits of the benefice the salary payable to any duly licensed curate of the church of the benefice in respect of duties performed by him as such during four months before the date of the receiving order, not exceeding fifty pounds.

(4) Nothing in this section shall prejudice the operation of the Ecclesiastical Dilapidations Act, 1871, the Sequestration Act, 1871, or the Benefices Act, 1898, or any mortgage or charge duly created under any Act of Parliament before the commencement of the bankruptcy on the profits of the benefice.

34 & 35 Vict. c. 43.
34 & 35 Vict. c. 45.
61 & 62 Vict. c. 48.

Appropriation of portion of pay or salary to creditors.

51.—(1) Where a bankrupt is an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this subsection, the court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent to the chief officer to the terms of such payment.

(2) Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, or to any compensation granted by the Treasury, the court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the court may direct.

(3) Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited.

Appropriation of income of property restrained from anticipation.

52. Where a married woman who has been adjudged bankrupt has separate property the income of which is subject to a restraint on anticipation, the court shall have power, on the application of the trustee, to order that, during such time as the court may order, the whole or some part of such income be paid to the trustee for distribution amongst the creditors, and in the exercise of such power the court shall have regard to the means of subsistence available for the woman and her children.

Vesting and transfer of property.

53.—(1) Until a trustee is appointed, the official receiver shall be the trustee for the purposes of this Act, and, immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

(2) On the appointment of a trustee, the property shall forthwith pass to and vest in the trustee appointed.

(3) The property of the bankrupt shall pass from trustee to trustee, including under that term the official receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(4) The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the British dominions requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Disclaimer of onerous property.

54.—(1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within twelve months after the first appointment of a trustee or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

(3) A trustee shall not be entitled to disclaim a lease without the leave of the court, except in any cases which may be prescribed by general rules, and the court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the court thinks just.

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6) The court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or

(*b*) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

(7) Where, on the release, removal, resignation or death of a trustee in bankruptcy, an official receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but such power of disclaimer shall be exercisable only within twelve months after the official receiver has become trustee in the circumstances aforesaid, or has become aware of the existence of such property, whichever period may last expire.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Powers of trustee to deal with property.

55. Subject to the provisions of this Act, the trustee may do all or any of the following things—

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof:

(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt:

(4) Exercise any powers, the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds and other instruments, for the purpose of carrying into effect the provisions of this Act:

(5) Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it; and sections fifty-six and seventy-three of the Fines and Recoveries Act, 1833, shall extend and apply to proceedings under this Act as if those sections were herein re-enacted and in terms made applicable to those proceedings.

3 & 4 Will. 4, c. 74.

Powers exercisable by trustee with permission of committee of inspection.

56. The trustee may, with the permission of the committee of inspection, do all or any of the following things:—

(1) Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same;

(2) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt;

(3) Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit;

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;

(6) Refer any dispute to arbitration, compromise any debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms, as may be agreed on;

(7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy;

(8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;

(9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Power to allow bankrupt to manage property.

57. The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the trustee may direct.

Allowance to bankrupt for maintenance or service.

58. The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the court.

Right of trustee to inspect goods pawned, &c.

59. Where any goods of a debtor against whom a receiving order has been made are held by any person by way of pledge, pawn, or other security, it shall be lawful for the official receiver or trustee, after giving notice in writing of his intention to do so, to inspect the goods, and,

where such notice has been given, such person as aforesaid shall not be entitled to realise his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

Limitation of trustee's powers in relation to copyright.

60. Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

Protection of official receivers and trustees from personal liability in certain cases.

61. Where the official receiver or trustee has seized or disposed of any goods, chattels, property, or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that the said goods, chattels, property, or other effects were not, at the date of the receiving order, the property of the debtor, the official receiver or trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property, nor for the costs of any proceedings taken to establish a claim thereto, unless the court is of opinion that the official receiver or trustee has been guilty of negligence in respect of the same.

Distribution of Property.

Declaration and distribution of dividends.

62.—(1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

(4) Before declaring a dividend, the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5) When the trustee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

Joint and separate dividends.

63.—(1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, unless otherwise directed by the Board of Trade on the application of any person interested, be declared together, and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Provision for creditors residing at a distance, &c.

64.—(1) In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined.

(2) He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

(3) Subject to the foregoing provisions, he shall distribute as dividend all money in hand.

Right of creditor who has not proved debt before declaration of a dividend.

65. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Interest on debts.

66.—(1) Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding five per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

(2) In dealing with the proof of the debt, the following rules shall be observed :—

(*a*) Any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and, if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or ascertainment of loans or otherwise), the account may be re-opened and the whole transaction treated as one ;

(*b*) Any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realisation of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate ;

(*c*) Where the debt due is secured and the security is realised after the receiving order, or the value thereof is assessed in the proof, the amount realised or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

Final dividend.

67.—(1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims.

(2) After the expiration of the time so limited, or, if the court on application by any such claimant grants him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

No action for dividend.

68. No action for a dividend shall lie against the trustee, but, if the trustee refuses to pay any dividend, the court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Right of bankrupt to surplus.

69. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

Part III.

Official Receivers and Staff of Board of Trade.

Official receivers of debtors' estates.

70.—(1) There shall continue to be official receivers of debtors' estates, who shall be appointed and removable by, and shall act under the general authority and directions of, the Board of Trade, but shall also be officers of the courts to which they are respectively attached.

(2) The number of official receivers, and the districts to be assigned to them, shall be fixed by the Board of Trade, with the concurrence of the Treasury. One person only shall be appointed for each district unless the Board of Trade, with the concurrence of the Treasury, otherwise direct; but the same person may, with the like concurrence, be appointed to act for more than one district.

(3) Where more than one official receiver is attached to the court, such one of them as is for the time being appointed by the court for any particular estate shall be the official receiver for the purposes of that estate. The court shall distribute the receiverships of the particular estates among the official receivers in the prescribed manner.

Deputy for official receiver.

71.—(1) The Board of Trade may by order direct that any of its officers mentioned in the order shall be capable of discharging the duties of any official receiver during any temporary vacancy in the office, or during the temporary absence of any official receiver through illness or otherwise.

(2) The Board of Trade may, on the application of an official receiver, at any time by order nominate some fit person to be his deputy, and to act for him for such time not exceeding two months as the order may fix, and under such conditions as to remuneration and otherwise as may be prescribed.

(3) The Board of Trade may by order, for reasons to be stated therein, direct in any special case that any of its officers mentioned in the order shall be capable of discharging any portion of the duties of the official receiver for the performance of which it is, in the opinion of the Board, expedient that some person other than the official receiver be appointed, provided that no additional expense be thereby incurred.

Status of official receiver.

72.—(1) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

(2) An official receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

(3) All provisions in this or any other Act referring to the trustee in a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee.

(4) The trustee shall supply the official receiver with such information, and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act.

Duties of official receiver as regards the debtor's conduct.

73. As regards the debtor, it shall be the duty of the official receiver—

(*a*) To investigate the conduct of the debtor and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under this Act or any enactment repealed by this Act, or which would justify the court in refusing, suspending or qualifying an order for his discharge;

(*b*) To make such other reports concerning the conduct of the debtor as the Board of Trade may direct;

(*c*) To take such part as may be directed by the Board of Trade in the public examination of the debtor;

(*d*) To take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct.

Duties of official receiver as to debtor's estate.

74.—(1) As regards the estate of a debtor, it shall be the duty of the official receiver—

(*a*) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;

(*b*) To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;

(*c*) To summon and preside at the first meeting of creditors;

(*d*) To issue forms of proxy for use at the meetings of creditors;

(*e*) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;

(*f*) To advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;

(*g*) To act as trustee during any vacancy in the office of trustee.

(2) For the purpose of his duties as interim receiver or manager, the official receiver shall have the same powers as if he were a receiver and manager appointed by the High Court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Board of Trade otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods:

Provided that, when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3) Every official receiver shall account to the Board of Trade and pay over all moneys and deal with all securities in such manner as the Board from time to time direct.

Power for Board of Trade to appoint officers.

75. The Board of Trade may, with the approval of the Treasury as to number, appoint such officers, including official receivers, clerks, and servants, as may be required by the Board for the execution of this Act, and may dismiss any such officer, clerk, or servant.

Part IV.

Trustees in Bankruptcy.

Official Name.

Official name of trustee.

76. The official name of a trustee in bankruptcy shall be "the trustee of the property of a bankrupt" (inserting the name of the bankrupt), and by that name the trustee may, in any part of the

British dominions or elsewhere, hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Appointment.

Power to appoint joint or successive trustees.

77.—(1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the bankrupt.

(2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or of the appointment of any such person not being certified by the Board of Trade.

Proceedings in case of vacancy in office of trustee.

78.—(1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

(2) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the official receiver shall report the matter to the Board of Trade, and the Board may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee in the place of the person so appointed by the Board of Trade as in the case of a first appointment.

(4) During any vacancy in the office of trustee the official receiver shall act as trustee.

Control over Trustee.

Discretionary powers of trustee and control thereof.

79.—(1) Subject to the provisions of this Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, and it shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or official receiver to call a meeting of the creditors, and the trustee or official receiver shall call such meeting accordingly within fourteen days:

Provided that the person at whose instance the meeting is summoned shall deposit with the trustee or the official receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the court so direct.

(3) The trustee may apply to the court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to the provisions of this Act, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to court against trustee.

80. If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Board of Trade over trustees.

81.—(1) The Board of Trade shall take cognizance of the conduct of trustees, and, in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by statute, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor in regard thereto, the Board shall inquire into the matter and take such action thereon as may be deemed expedient.

(2) The Board may at any time require any trustee to answer any inquiry made by them in relation to any bankruptcy in which the trustee is engaged, and may, if the Board think fit, apply to the court to examine on oath the trustee or any other person concerning the bankruptcy.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the trustee.

Remuneration and Costs.

Remuneration of trustee.

82.—(1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Board of Trade that the remuneration is unnecessarily large, the Board of Trade shall fix the amount of the remuneration.

(3) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(4) Where a trustee acts without remuneration, he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Board of Trade, approve.

(5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt or any solicitor or other person that may be employed about a bankruptcy.

Allowance and taxation of costs.

83.—(1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

(2) Where the trustee is a solicitor, he may contract that the remuneration for his services as trustee shall include all professional services.

(3) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing master shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons,

in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

(4) Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs of charges to the proper officer for taxation, and, if he fails to do so within seven days after receipt of the request, or such further time as the court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

Receipts, Payments, Accounts, Audit.

Trustee to furnish list of creditors.

84. The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to him by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum of threepence per folio of seventy-two words, together with the cost of the postage thereof.

Trustee to furnish statement of accounts.

85. It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon receipt of such notice, furnish and transmit such statement of the accounts:

Provided that the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be repaid to him out of the estate if the creditors or the court so direct.

Books to be kept by trustee.

86. The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of the court, personally or by his agent, inspect any such books.

Annual statement of proceedings.

87.—(1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Board of Trade a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

(2) The Board of Trade shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission, which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Trustee not to pay into private account.

88. No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

Payment of money into Bank of England.

89.—(1) The Bankruptcy Estates Account shall continue to be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under this Act shall be paid to that account.

(2) Every trustee in bankruptcy shall, in such manner and at such times as the Board of Trade with the concurrence of the Treasury direct, pay the money received by him to the Bankruptcy Estates Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

Provided that—

(*a*) if it appears to the committee of inspection that, for the purpose of carrying on the debtor's business or of obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the Board of Trade that for any other reason it is for the advantage of the creditors that the trustee should have an account with a local bank, the Board of Trade shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such local bank as the committee may select;

(*b*) in any bankruptcy composition or scheme of arrangement in which the official receiver is acting as trustee, or in which a trustee is acting without a committee of inspection, the Board of Trade may, if for special reasons they think fit to do so, upon the application of the official receiver or other trustee, authorise the trustee to make his payments into and out of such local bank as the Board may direct.

(3) Where the trustee opens an account in a local bank, he shall open and keep it in the name of the debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate, and the trustee shall make his payments into and out of the local bank in the prescribed manner.

(4) Subject to any general rules relating to small bankruptcies under section one hundred and twenty-nine of this Act, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the Board of Trade, for the safety of the account, or other sufficient cause, order the withdrawal of the account.

(5) If a trustee at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall have no claim to remuneration, and may be removed from his office by the Board of Trade, and shall be liable to pay any expenses occasioned by reason of his default.

(6) All payments out of money standing to the credit of the Board of Trade in the Bankruptcy Estates Account shall be made by the Bank of England in the prescribed manner.

Investment of surplus funds.

90.—(1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of bankrupts' estates, the Board of Trade shall notify the same to the Treasury, and shall pay over the same or any part thereof as the Treasury may require to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the said sums or any part thereof in Government securities to be placed to the credit of the said account.

(2) Whenever any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of bankrupts' estates, the Board of Trade shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board of Trade such sum as may be required to the credit of the Bankruptcy Estates Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The Treasury, out of any sums so paid to them, may pay such sums as they consider necessary for defraying the expenses of providing office accommodation for any officer performing duties under this Act.

(4) If, after any sum is so expended, the Board of Trade notify to the Treasury that an amount is required to answer the demands in respect of bankrupts' estates, and the securities and moneys held by the Treasury

on the account mentioned in this section are insufficient to pay the amount so required, the Treasury shall, for the purpose of meeting the deficiency, charge on and pay out of the Consolidated Fund or the growing produce thereof, the sum expended in pursuance of the last subsection, or of any corresponding enactment repealed by this Act, or such part thereof as appears to them to be required.

(5) The dividends on the investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

Certain receipts and fees to be applied in aid of expenditure.

91. The Treasury may issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising from fees, fee stamps, and dividends on investments under this Act, any sums which may be necessary to meet the charges estimated by the Board of Trade in respect of salaries and expenses under this Act.

Audit of trustee's accounts.

92.—(1) Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as such trustee.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board of Trade shall cause the accounts so sent to be audited, and, for the purposes of the audit, the trustee shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the trustee.

(4) When any such account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

Vacation of Office by Trustee.

Release of trustee.

93.—(1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a trustee is withheld, the court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3) An order of the Board releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) The foregoing provisions of this section shall apply to an official receiver when he is, or is acting as, trustee, and when an official receiver has been released under this section, or any previous similar enactment, he shall continue to act as trustee for any subsequent purposes of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release,

(5) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the official receiver shall be the trustee.

(6) Where, on the release of a trustee, an official receiver is, or is acting as, trustee, no liability shall attach to him personally in respect of any act done or default made, or liability incurred, by any prior trustee.

Office of trustee vacated by insolvency.

94. If a receiving order is made against a trustee, he shall thereby vacate his office of trustee.

Removal of trustee.

95.—(1) The creditors may, by ordinary resolution, at a meeting especially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) If the Board of Trade are of opinion—

(*a*) that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act; or

(*b*) that his trusteeship is being needlessly protracted without any probable advantage to the creditors; or

(*c*) that he is by reason of lunacy, or continued sickness or absence, incapable of performing his duties; or

(*d*) that his connection with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally; or

where in any other matter he has been removed from office on the ground of misconduct, the Board may remove him from his office, but, if the creditors by ordinary resolution disapprove of his removal, he or they may appeal against it to the High Court.

Part V.

Constitution, Procedure, and Powers of Court.

Jurisdiction.

Jurisdiction to be exercised by High Court and county courts.

96.—(1) The courts having jurisdiction in bankruptcy shall be the High Court and the county courts.

(2) But the Lord Chancellor may from time to time, by order under his hand, exclude any county court from having jurisdiction in bankruptcy, and for the purposes of bankruptcy jurisdiction may attach its district or any part thereof to the High Court, or to any other county court or courts, and may from time to time revoke or vary any order so made. The Lord Chancellor may, in like manner and subject to the like conditions, detach the district of any county court or any part thereof from the district and jurisdiction of the High Court.

(3) The term "district," when used in this Act with reference to a county court, means the district of the court for the purposes of bankruptcy jurisdiction.

(4) A county court which at the commencement of this Act is excluded from having bankruptcy jurisdiction shall continue to be so excluded until the Lord Chancellor otherwise orders, and the districts existing at the commencement of this Act shall subsist until the Lord Chancellor otherwise orders.

(5) Periodical sittings for the transaction of bankruptcy business by county courts having jurisdiction in bankruptcy shall be held at such times and at such intervals as the Lord Chancellor prescribes for each such court.

Transaction of bankruptcy business by special judge of High Court. 36 & 37 Vict. c. 66.

97.—(1) Subject to general rules, and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and Acts amending it, all matters in respect of which jurisdiction is given to the High Court by this Act shall be assigned to such division of the High Court as the Lord Chancellor may from time to time direct.

(2) All such matters shall, subject as aforesaid, be ordinarily transacted and disposed of by or under the direction of one of the judges of the High Court, and the Lord Chancellor shall from time to time assign a judge for that purpose.

Provided that during vacation, or during the illness of the judge so assigned, or during his absence, or for any other reasonable cause, such matters or any part thereof, may be transacted and disposed of by or under the directions of any judge of the High Court named for that purpose by the Lord Chancellor.

(3) Subject to general rules, all bankruptcy matters shall be entitled "In bankruptcy."

Petition, where to be presented.

98.—(1) If the debtor by or against whom a bankruptcy petition is presented has resided or carried on business within the London bankruptcy district as defined by this Act for the greater part of the six months immediately preceding the presentation of the petition, or for a longer period during those six months than in the district of any county court, or is not resident in England, or if the petitioning creditor is unable to ascertain the residence of the debtor, the petition shall be presented to the High Court

(2) In any other case the petition shall be presented to the county court for the district in which the debtor has resided or carried on business for the longest period during the six months immediately preceding the presentation of the petition.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

Definition of London bankruptcy district.

99. The London bankruptcy district shall, for the purposes of this Act, comprise the city of London and the liberties thereof, and all such parts of the metropolis and other places as are situated within the district of any county court described as a metropolitan county court in the list contained in the Third Schedule to this Act.

Transfer of proceedings from court to court.

100.—(1) Subject to the provisions of this Act, every court having original jurisdiction in bankruptcy shall have jurisdiction throughout England.

(2) Any proceedings in bankruptcy may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by any prescribed authority and in the prescribed manner from one court to another court, or may, by the like authority, be retained in the court in which the proceedings were commenced, although it may not be the court in which the proceedings ought to have been commenced.

(3) If any question of law arises in any bankruptcy proceeding in a county court which all the parties to the proceeding desire, or which one of them and the judge of the county court desire, to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court. The special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Exercise in chambers of High Court jurisdiction.

101. Subject to the provisions of this Act and to general rules, the judge of the High Court exercising jurisdiction in bankruptcy may exercise in chambers the whole or any part of his jurisdiction.

Jurisdiction in bankruptcy of registrar.

102.—(1) The registrars in bankruptcy of the High Court, and the registrars of county courts having jurisdiction in bankruptcy, shall have the powers and jurisdiction in this section mentioned, and any order

made or act done by such registrars in the exercise of the said powers and jurisdiction shall be deemed the order or act of the court.

(2) Subject to general rules limiting the powers conferred by this section, a registrar shall have power—

(*a*) To hear bankruptcy petitions, and to make receiving orders and adjudications thereon;

(*b*) To hold the public examination of debtors;

(*c*) To grant orders of discharge where the application is not opposed;

(*d*) To approve compositions or schemes of arrangement where they are not opposed;

(*e*) To make interim orders in cases of urgency;

(*f*) To make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers;

(*g*) To hear and determine any unopposed or ex parte application;

(*h*) To summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property.

(3) The registrars in bankruptcy of the High Court shall also have power to grant orders of discharge and certificates of removal of disqualifications, and to approve compositions and schemes of arrangement.

(4) A registrar shall not have power to commit for contempt of court.

(5) The Lord Chancellor may by order direct that any specified registrar of a county court shall have and exercise all the powers of a registrar in bankruptcy of the High Court.

Powers of county court.

103. A county court shall, for the purposes of its bankruptcy jurisdiction, in addition to the ordinary powers of the court, have all the powers and jurisdiction of the High Court, and the orders of the court may be enforced accordingly in manner prescribed.

Board of Trade to make payments in accordance with directions of court.

104. Where any moneys or funds have been received by an official receiver or by the Board of Trade, and the court makes an order declaring that any person is entitled to such moneys or funds, the Board of Trade shall make an order for the payment thereof to that person.

General power of bankruptcy courts.

105.—(1) Subject to the provisions of this Act, every court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a completion distribution of property in any such case:

Provided that the jurisdiction hereby given shall not be exercised by the county court for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceeding consent hereto, or the money, money's worth, or right in dispute does not, in the opinion of the judge, exceed in value two hundred pounds.

(2) A court having jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of its powers under this Act by the order of any other court, nor shall any appeal lie from its decisions, except in manner directed by this Act.

(3) If in any proceeding in bankruptcy there arises any question of fact which either of the parties desire to be tried before a jury instead of by the court itself, or which the court thinks ought to be tried by a jury, the court may, if it thinks fit, direct the trial to be had with a jury, and the trial may be had accordingly in the High Court in the same manner as if it were the trial of an issue of fact in an action, and in the county court in the manner in which jury trials in ordinary cases are by law held in that court.

(4) Where a receiving order has been made in the High Court under this Act, the judge by whom such order was made shall have power, if he sees fit, without any further consent, to order the transfer to such judge of any action pending in any other division and brought or continued by or against the bankrupt.

(5) Where default is made by a trustee, debtor, or other person, in obeying any order or direction given by the Board of Trade, or by an official receiver or any other officer of the Board of Trade under any power conferred by this Act or any enactment repealed by this Act, the court may, on the application of the Board of Trade or an official receiver or other duly authorised person, order such defaulting trustee, debtor, or person to comply with the order or direction so given; and the court may also, if it thinks fit, upon any such application, make an immediate order for the committal of such defaulting trustee, debtor, or other person; provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Notification of bankruptcy of peers and members of Parliament.

106.—(1) If a peer of the United Kingdom or of any part of the United Kingdom or any other Lord of Parliament is adjudged bankrupt, the court shall cause the fact of his having been adjudged bankrupt to be certified as soon as may be to the Speaker of the House of Lords and the Clerk of the Crown in Chancery.

(2) If a member of the House of Commons is adjudged bankrupt, and the disqualifications arising from his bankruptcy are not removed within six months from the date of the order, the court shall immediately after the expiration of that time certify the same to the Speaker of the House of Commons.

Judgment Debtors.

Judgment debtor's summons to be bankruptcy business. 32 & 33 Vict. c. 62.

107.—(1) It shall be lawful for the Lord Chancellor by order to direct that the jurisdiction and powers under section five of the Debtors Act, 1869, now vested in the High Court, shall be assigned to and exercised by the judge to whom bankruptcy business is assigned.

(2) It shall be lawful also for the Lord Chancellor in like manner to direct that the whole or any part of the said jurisdiction and powers shall be delegated to and exercised by the registrars in bankruptcy of the High Court.

(3) Any order made under this section may, at any time, in like manner, be rescinded or varied.

(4) Where, under section five of the Debtors Act, 1869, application is made by a judgment creditor to a court having bankruptcy jurisdiction for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and the provisions of this Act except Part VII. thereof shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

(5) General rules under this Act may be made for the purpose of carrying into effect the provisions of the Debtors Act, 1869.

Appeals.

Appeals in bankruptcy.

108.—(1) Every court having jurisdiction in bankruptcy under this Act may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

(2) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows:—

(*a*) Where the order is made by a county court, an appeal shall lie to a divisional court of the High Court, of which the judge to

whom bankruptcy business is for the time being assigned shall, for the purpose of hearing any such appeal, be a member. The decision of the divisional court upon any such appeal shall be final and conclusive, unless in any case the divisional court or the court of appeal sees fit to give special leave to appeal therefrom to the court of appeal, whose decision in such case shall be final and conclusive ;

(*b*) Where the order (not being an order on appeal from a county court) is made by the High Court, an appeal shall lie to the Court of Appeal, and an appeal shall, with the leave of the Court of Appeal, but not otherwise, lie from the order of that court to the House of Lords ;

(*c*) No appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

(3) Where by this Act an appeal to the High Court is given against any decision of the Board of Trade, or of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

Procedure.

Discretionary powers of court.

109.—(1) Subject to the provisions of this Act and to general rules, the costs of and incidental to any proceeding in court under this Act shall be in the discretion of the court : Provided that, where any issue is tried by a jury, the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the judge before whom such issue is tried otherwise orders.

(2) The court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3) The court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.

(4) Where by this Act, or by general rules, the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof, upon such terms, if any, as the court may think fit to impose.

(5) Subject to general rules, the court may in any matter take the whole or any part of the evidence either vivâ voce, or by interrogatories, or upon affidavit, or, out of the United Kingdom, by commission.

Consolidation of petitions.

110. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the court may consolidate the proceedings, or any of them, on such terms as the court thinks fit.

Power to change carriage of proceedings.

111. Where the petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the petitioning creditor.

Continuance of proceedings on death of debtor.

112. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive.

Power to stay proceedings.

113. The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the court may think just.

Power to present petition against one partner.

114. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

115. Where there are more respondents than one to a petition, the court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them. Power to dismiss petition against some respondents only.

116. Where a receiving order has been made on a bankruptcy petition by or against one member of a partnership, any other bankruptcy petition by or against a member of the same partnership shall be filed in or transferred to the court in which the first-mentioned petition is in course of prosecution, and, unless the court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the court may give such directions for consolidating the proceedings under the petitions as it thinks just. Property of partners to be vested in same trustee.

117. Where a member of a partnership is adjudged bankrupt, the court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs. Actions by trustee and bankrupt's partners.

118. Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt. Actions on joint contracts.

119. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath or otherwise, as the court may direct. Proceedings in partnership name.

Officers.

120.—(1) No registrar or other officer attached to any court having jurisdiction in bankruptcy shall, during his continuance in office, be capable of being elected or sitting as a member of the House of Commons. Disabilities of officers.

(2) No registrar or official receiver or other officer attached to any such court shall, during his continuance in office, either directly or indirectly, by himself, his clerk, or partner, act as solicitor in any proceeding in bankruptcy or in any prosecution of a debtor by order of the court, and, if he does so act, he shall be liable to be dismissed from office.

Provided that nothing in this section shall affect the right of any registrar or officer appointed before the twenty-fifth day of August eighteen hundred and eighty-three to act as solicitor by himself, his clerk, or partner to the extent permitted by section sixty-nine of the Bankruptcy Act, 1869. 32 & 33 Vict. c. 71.

Orders and Warrants of Court.

121. Any order made by a court having jurisdiction in bankruptcy in England under this Act or any enactment repealed by this Act shall be enforced in Scotland and Ireland in the courts having jurisdiction in bankruptcy in those parts of the United Kingdom respectively, in the same manner in all respects as if the order had been made by the court hereby required to enforce it; and in like manner any order made by a court having jurisdiction in bankruptcy in Scotland shall be enforced in England and Ireland, and any order made by a court having jurisdiction in bankruptcy in Ireland shall be enforced in England and Scotland by Enforcement of orders of courts throughout United Kingdom.

the courts respectively having jurisdiction in bankruptcy in the part of the United Kingdom where the orders may require to be enforced, and in the same manner in all respects as if the order had been made by the court required to enforce it in a case of bankruptcy within its own jurisdiction.

Courts to be auxiliary to each other.

122. The High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

Warrants of Bankruptcy Courts.

123.—(1) Any warrant of a court having jurisdiction in bankruptcy in England may be enforced in Scotland, Ireland, the Isle of Man, the Channel Islands, and elsewhere in His Majesty's dominions, in the same manner and subject to the same privileges in and subject to which a warrant issued by any justice of the peace against a person for an indictable offence against the laws of England, may be executed in those parts of His Majesty's dominions respectively, in pursuance of the Acts of Parliament in that behalf.

(2) A search warrant issued by a court having jurisdiction in bankruptcy for the discovery of any property of a debtor may be executed in manner prescribed or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

Commitment to prison.

124. Where the court commits any person to prison, the commitment may be to such convenient prison as the court thinks expedient, and, if the gaoler of any prison refuses to receive any prisoner so committed, he shall be liable for every such refusal to a fine not exceeding one hundred pounds.

Part VI.

Supplemental Provisions.

Application of Act.

Married women.

125.—(1) Every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the bankruptcy laws as if she were a feme sole.

(2) Where a married woman carries on a trade or business and a final judgment or order for any amount has been obtained against her, whether or not expressed to be payable out of her separate property, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice as though she were personally bound to pay the judgment debt or sum ordered to be paid.

Exclusion of companies. 8 Edw. 7, c. 69.

126. A receiving order shall not be made against any corporation or against any partnership or association or company registered under the Companies (Consolidation) Act, 1908, or any enactment repealed by that Act.

Application to limited partnerships.

127. Subject to such modifications as may be made by general rules under this Act, the provisions of this Act shall apply to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership being adjudged bankrupt, the assets of the limited partnership shall vest in the trustee

Privilege of Parliament.

128. If a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with under this Act in like manner as if he had not such privilege.

Application of Act in case of small estates.

129. Where a petition is presented by or against a debtor, if the court is satisfied by affidavit or otherwise, or the official receiver reports to the court, that the property of the debtor is not likely to exceed in value three thundred pounds, the court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:—

(i) If the debtor is adjudged bankrupt the official receiver shall be the trustee in the bankruptcy;

(ii) There shall be no committee of inspection, but the official receiver may do with the permission of the Board of Trade all things which may be done by the trustee with the permission of the committee of inspection;

(iii) Such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

Provided that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

Administration in bankruptcy of estate of person dying insolvent.

130.—(1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.

(2) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.

(3) A petition for administration under this section shall not be presented to the court after proceedings have been commenced in any court of justice for the administration of the deceased debtor's estate, but that court may, when satisfied that the estate is insufficient to pay its debts, transfer the proceedings to the court exercising jurisdiction in bankruptcy, and thereupon the last-mentioned court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(4) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver of the court, as trustee thereof, and he shall forthwith proceed to realise and distribute it in accordance with the provisions of this Act.

Provided that the creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Act, relating to trustees and committees of inspection, shall apply to trustees and committees of inspection appointed under the power so conferred.

If no committee of inspection is appointed, any act or thing or any direction or permission which might have been done or given by a committee of inspection may be done or given by the Board of Trade.

(5) With the modifications hereinafter mentioned, all the provisions of Part II. of this Act (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made

therein by general rules under subsection eleven of this section, the following provisions, namely, section twenty-five of this Act (which relates to inquiries as to the debtor's conduct, dealings, and property); section eighty-three of this Act (which relates to the costs of trustees, managers, and other persons); section one hundred and twenty-nine of this Act (which relates to the summary administration of small estates); and subsection (4) of section ninety-three of this Act so far as it relates to the effect of the release of official receivers; shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act, and subsection (1) of section thirty-five of this Act shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.

(6) In the administration of the property of the deceased debtor under an order of administration, the official receiver or trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and shall, notwithstanding anything to the contrary in the provisions of this Act relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.

(7) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver or trustee, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(8) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver or trustee; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

(9) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor; and, where a petition is so presented by such a representative, this section shall apply subject to such modifications as may be prescribed by general rules made under subsection eleven of this section.

(10) Unless the context otherwise requires, "court," in this section, means the court within the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease; "creditor" means one or more creditors qualified to present a bankruptcy petition as in this Act provided.

(11) General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

Outstanding bankruptcies under earlier enactments.

131.—(1) The enactments set out in the Fourth Schedule of this Act, and re-enacted in the manner therein appearing, shall apply as respects debtors who have been adjudged bankrupt or whose affairs have been liquidated by arrangement under the Bankruptcy Act, 1869, or any previous Bankruptcy Act, and as respects proceedings under any such Act outstanding at the commencement of this Act.

(2) Save as aforesaid, nothing in this Act shall affect such proceedings as aforesaid, but they shall continue, and the provisions of the Bankruptcy Act, 1869, or any previous Bankruptcy Acts, and any rules,

orders, and tables of fees made thereunder, which were applicable to the case immediately before the commencement of this Act, shall continue to apply thereto as if this Act had not been passed.

General Rules.

Power to make general rules.

132.—(1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act.

Provided that the general rules so made shall not extend the jurisdiction of the court.

(2) All general rules made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and, if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

Fees, Salaries, Expenditure, and Returns.

Fees and remuneration.

133.—(1) The Lord Chancellor may, with the sanction of the Treasury, prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act; and the Treasury shall direct by whom and in what manner they are to be collected and accounted for, and to what account they shall be paid.

(2) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may vary, increase, or diminish such remuneration, as they may think fit.

Judicial salaries, &c.

134. The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may vary, increase, or diminish such remuneration, as he may think fit.

Annual accounts of receipts and expenditure in respect of bankruptcy proceedings.

38 & 39 Vict. c. 77.

135.—(1) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of bankruptcy proceedings, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

(2) The accounts of the Board of Trade, under this Act, shall be audited in such manner as the Treasury direct, and for the purpose of the account to be laid before Parliament the Board of Trade shall make such returns and give such information as the Treasury may direct.

Returns by bankruptcy officers.

136. The registrars and other officers of the courts acting in bankruptcy shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act, to be prepared and laid before both Houses of Parliament.

Evidence.

Gazette to be evidence.

137.—(1) A copy of the London Gazette containing any notice inserted therein in pursuance of this Act, shall be evidence of the facts stated in the notice.

(2) The production of a copy of the London Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Evidence of proceedings at meetings of creditors.

138.—(1) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

Evidence of proceedings in bankruptcy.

139. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by any court having jurisdiction in bankruptcy, any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Act, shall, if it appears to be sealed with the seal of any court having jurisdiction in bankruptcy, or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever.

Swearing of affidavits.

140. Subject to general rules, any affidavit to be used in a bankruptcy court may be sworn before any person authorised to administer oaths in the High Court, or in the Court of Chancery of the county palatine of Lancaster, or before any registrar of a bankruptcy court, or before any officer of a bankruptcy court authorised in writing in that behalf by the judge of the court, or before a justice of the peace for the county or place where it is sworn, or, in the case of a person residing in Scotland or in Ireland, before a judge ordinary, magistrate, or justice of the peace, or, in the case of a person who is out of the United Kingdom before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace, or qualified as aforesaid, by a British minister or British consul, or by a notary public).

Death of debtor or witness.

141. In the case of the death of the debtor or his wife, or of a witness whose evidence has been received by any court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Bankruptcy courts to have seals.

142. Every court having jurisdiction in bankruptcy under this Act shall have a seal describing the court in such manner as may be directed by order of the Lord Chancellor, and judicial notice shall be taken of the seal, and of the signature of the judge or registrar of any such court, in all legal proceedings.

Certificate of appointment of trustee.

143. A certificate of the Board of Trade that a person has been appointed trustee under this Act shall be conclusive evidence of his appointment.

Proceedings of Board of Trade.

144.—(1) All documents purporting to be orders or certificates made or issued by the Board of Trade, and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence, and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade shall be conclusive evidence of the fact so certified.

Miscellaneous.

Computation of time.

145.—(1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter Week, or a day appointed for public fast, humiliation, or thanksgiving, or a day on which the court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

(2) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

Service of notices.

146. All notices and other documents for the service of which no special mode is directed may be sent by post to the last known address of the person to be served therewith.

Formal defect not to invalidate proceedings.

147.—(1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court.

(2) No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

Exemption of deeds, &c., from stamp duty.

148. Every deed, conveyance, assignment, surrender, admission or other assurance relating solely to freehold, leasehold, copyhold or customary property, or to any mortgage charge or other incumbrance on, or any estate, right or interest in, any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, admission or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act.

Acting of corporations, partners, &c.

149. For all or any of the purposes of this Act, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee or curator bonis.

Construction of Acts mentioning commission of bankruptcy, &c.

150.—(1) Where in any Act, instrument, or proceeding, passed, executed, or taken before the commencement of this Act, mention is made of a commission of bankruptcy or fiat in bankruptcy, the same shall be construed, with reference to the proceedings under a bankruptcy petition, as if a commission of or a fiat in bankruptcy had been actually issued at the time of the presentation of such petition.

(2) Where by any Act or instrument reference is made to the Bankruptcy Act, 1869, or to any enactment repealed by this Act, that Act or instrument shall, unless the context otherwise requires, be construed and have effect as if this Act or the corresponding provision (if any) of this Act were therein referred to.

Certain provisions to bind Crown.

151. Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

Saving for existing rights of audience.

152. Nothing in this Act shall take away or affect any right of audience that any person may have had at the commencement of this Act.

Unclaimed Funds or Dividends.

Unclaimed and undistributed dividends or funds under this and former Acts.

153.—(1) Where the trustee, under any bankruptcy, composition or scheme, pursuant to this Act or any enactment repealed by this Act, has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay it to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(2) Where any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive, or distribute any funds or dividends under any Act of Parliament mentioned in the Fifth Schedule to this Act, or any petition, resolution, deed or other proceeding under or in pursuance of any such Act, have remained or remain unclaimed or undistributed for six months after they became claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay them to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish the trustee or other person with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

The Board of Trade may at any time order any such trustee or other person to submit to them an account verified by affidavit of the sums received and paid by him under or in pursuance of any such petition, resolution, deed, or other proceeding as aforesaid, and may direct and enforce an audit of the account.

The Board of Trade, with the concurrence of the Treasury, may from time to time appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section any court having jurisdiction in bankruptcy shall have and, at the instance of the person so appointed or of the Board of Trade, may exercise, all the powers conferred by this Act with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of this Act with respect thereto shall, with any necessary modifications, apply to proceedings under this section.

(3) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(4) Any person claiming to be entitled to any moneys paid in to the Bankruptcy Estates Account, pursuant to this section, may apply to the Board of Trade for payment to him of the same, and the Board of Trade, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due.

Any person dissatisfied with the decision of the Board of Trade in respect of his claim may appeal to the High Court.

Part VII.

Bankruptcy Offences.

Fraudulent debtors.

154. Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall in each of the cases following be guilty of a misdemeanour :—

(1) If he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless he proves that he had no intent to defraud :

(2) If he does not deliver up to the trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud :

(3) If he does not deliver up to the trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud :

(4) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless he proves that he had no intent to defraud :

(5) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he fraudulently removes any part of his property to the value of ten pounds or upwards :

(6) If he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud :

(7) If, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof :

(8) If, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law :

(9) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law :

(10) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law :

(11) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulently parting with, altering, or making any omission in, any document affecting or relating to his property or affairs :

(12) If, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within six months next

before such presentation, he attempts to account for any part of his property by fictitious losses or expenses :

(13) If, within six months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section one hundred and seven of this Act, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same :

(14) If, within six months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section one hundred and seven of this Act, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he obtains under the false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud :

(15) If, within six months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section one hundred and seven of this Act, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he pawns, pledges, or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging, or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud :

(16) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy.

For the purpose of this section, the expression "trustee" means the official receiver of the debtor's estate or trustee administering his estate for the benefit of his creditors.

Undischarged bankrupt obtaining credit.

155. Where an undischarged bankrupt—

(*a*) either alone or jointly with any other person obtains credit to the extent of ten pounds or upwards from any person without informing that person that he is an undischarged bankrupt ; or

(*b*) engages in any trade or business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt ;

he shall be guilty of a misdemeanour.

Frauds by bankrupts, &c.

156. If any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made—

(*a*) in incurring any debt or liability has obtained credit under false pretences or by means of any other fraud ;

(*b*) with intent to defraud his creditors or any of them, has made or caused to be made any gift or transfer of, or charge on, his property ;

(*c*) with intent to defraud his creditors, has concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him ;

he shall be guilty of a misdemeanour.

Bankrupt guilty of gambling, &c.

157.—(1) Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, shall be guilty of a misdemeanour, if, having been engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business,—

(*a*) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business; or

(*b*) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid; or

(*c*) on being required by the Official Receiver at any time, or in the course of his public examination by the court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred:

Provided that, in determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused person at the time when he entered into the speculations shall be taken into consideration.

(2) A prosecution shall not be instituted against any person under this section except by order of the court, nor where the receiving order in the bankruptcy is made within two years from the first day of April nineteen hundred and fourteen.

(3) Where a receiving order is made against a person under section one hundred and seven of this Act, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

Bankrupt failing to keep proper accounts.

158.—(1) If any person who has on any previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors is adjudged bankrupt, or if a receiving order is made in respect of his estate, he shall be guilty of a misdemeanour, if, having during the whole or any part of the two years immediately preceding the date of the presentation of the bankruptcy petition been engaged in any trade or business, he has not kept proper books of account throughout those two years or such part thereof as aforesaid, and, if so engaged at the date of presentation of the petition, thereafter, whilst so engaged, up to the date of the receiving order, or has not preserved all books of account so kept:

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section if his unsecured liabilities at the date of the receiving order did not exceed one hundred pounds, or if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2) A prosecution shall not be instituted against any person under this section except by order of the court, nor where the receiving order in the bankruptcy is made within two years from the first day of April nineteen hundred and fourteen.

(3) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual stocktakings.

(4) Paragraphs (9), (10), and (11) of section one hundred and fifty-four of this Act (which relate to the destruction, mutilation, and falsification and other fraudulent dealing with books and documents), shall, in their application to such books as aforesaid, have effect as if "two years next before the presentation of the bankruptcy petition" were substituted

for the time mentioned in those paragraphs as the time prior to the presentation within which the acts or omissions specified in those paragraphs constitute an offence.

(5) Where a receiving order is made against a person under section one hundred and seven of this Act, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

Bankrupt absconding with property.

159. If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the presentation of a bankruptcy petition by or against him, or within six months before such presentation, quits England and takes with him, or attempts or makes preparation to quit England and take with him, any part of his property to the amount of twenty pounds or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of felony.

False claim, &c.

160. If any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account, which is untrue in any material particular, he shall be guilty of a misdemeanour, and shall on conviction on indictment be liable to imprisonment with or without hard labour for a term not exceeding one year.

Order by court for prosecution on report of trustee.

161. Where an official receiver or a trustee in a bankruptcy reports to any court exercising jurisdiction in bankruptcy that in his opinion a debtor who has been adjudged bankrupt or in respect of whose estate a receiving order has been made has been guilty of any offence under this Act or any enactment repealed by this Act, or where the court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the debtor has been guilty of any such offence, the court shall, if it appears to the court that there is a reasonable probability that the debtor will be convicted, order that the debtor be prosecuted for such offence.

Provided that it shall not be obligatory on the court in the absence of any application by the official receiver for such an order to make an order under this section for the prosecution of an offence, unless it appears to the court that the circumstances are such as to render a prosecution desirable.

Criminal liability after discharge or composition.

162. Where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Power for court to commit for trial.

163.—(1) Where there is, in the opinion of the court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by statute made a misdemeanour in cases of bankruptcy, the court may commit the bankrupt or such other person for trial.

(2) For the purpose of committing the bankrupt or such other person for trial, the court shall have all the powers of a stipendiary magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail, or otherwise.

Nothing in this subsection shall be construed as derogating from the powers or jurisdiction of the High Court.

Trial and punishment of offences.

164.—(1) A person guilty of an offence declared to be a felony or a misdemeanour under this Act in respect of which no special penalty is imposed by this Act shall be liable, on conviction on indictment, to imprisonment with or without hard labour for a term not exceeding two years, or, on summary conviction, to imprisonment with or without hard labour for a term not exceeding six months.

Provided that the maximum term of imprisonment with or without hard labour which may be awarded on conviction on indictment of a misdemeanour under section one hundred and fifty-six of this Act shall be one year.

(2) Summary proceedings in respect of any such offence shall not be instituted after one year from the first discovery thereof either by the official receiver or by the trustee in the bankruptcy, or, in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.

(3) Every misdemeanour under this Act shall be deemed to be an offence under and subject to the provisions of the Vexatious Indictments Act, 1859, and any Act amending that Act, and when any person is charged with any such misdemeanour before a court of summary jurisdiction the court shall take into consideration any evidence adduced before them tending to show that the act charged was not committed with a guilty intent. 22 & 23 Vict. c. 17.

(4) In an indictment for an offence under this Act, it shall be sufficient to set forth the substance of the offence charged in the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of, any court acting under this Act or any Act repealed by this Act.

Public Prosecutor to act in certain cases.

165. Where the court orders the prosecution of any person for any offence under this Act or any enactment repealed by this Act, or for any offence arising out of or connected with any bankruptcy proceedings, it shall be the duty of the Director of Public Prosecutions to institute and carry on the prosecution:

Provided that, where the order of the court is made on the application of the official receiver and based on his report, the Board of Trade may themselves, or through the official receiver, institute the prosecution and carry on the proceedings, if or so long as those proceedings are conducted before a court of summary jurisdiction, unless in the course thereof circumstances arise which, in the opinion of such court or of the Board, render it desirable that the remainder of the proceedings should be carried on by the Director of Public Prosecutions.

Evidence as to frauds by agents.

166. A statement or admission made by any person in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any of the misdemeanours referred to in section eighty-five of the Larceny Act, 1861 (which section relates to frauds by agents, bankers and factors). 24 & 25 Vict. c. 96.

Part VIII.

General.

Interpretation.

Interpretation.

167. In this Act, unless the context otherwise requires,—

"The court" means the court having jurisdiction in bankruptcy under this Act;

"Affidavit" includes statutory declaration, affirmation, and attestation on honour;

"Available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made;

"Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy;
"Gazetted" means published in the London Gazette;
"General rules" include forms;
"Goods" includes all chattels personal;
"Local bank" means any bank in, or in the neighbourhood of, the bankruptcy district in which the proceedings are taken;
"Oath" includes affirmation, declaration, and attestation on honour;
"Ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;
"Prescribed" means prescribed by general rules within the meaning of this Act;
"Property" includes money, goods, things in action, land, and every description of property, whether real or personal and whether situate in England or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined;
"Resolution" means ordinary resolution;
"Secured creditor" means a person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor;
"Sheriff" includes any officer charged with the execution of a writ or other process;
"Special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;
"Trustee" means the trustee in bankruptcy of a debtor's estate.

Repeals.

Repeal of enactments and savings.

168.—(1) The Acts mentioned in the Sixth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

(2) This Act shall apply to proceedings under the Bankruptcy Acts 1883 to 1913, pending at the commencement of this Act, as if commenced under this Act.

(3) Until revoked or altered under the powers of this Act, any fees prescribed and any general rules and orders made under the Bankruptcy Acts, 1883 to 1913, and the Bankruptcy (Discharge and Closure) Act, 1887, which are in force at the commencement of this Act, shall continue in force, and shall have effect as if made under this Act.

(4) Nothing in the repeals effected by this Act shall affect the powers or duties, tenure of office, terms of remuneration, or right to pension, of any officer appointed before the commencement of this Act.

(5) Nothing in this Act shall affect any provisions of the Bankruptcy Acts, 1883 to 1913, relating to disqualifications on account of bankruptcy to executions or to the administration of small estates in county courts which are left unrepealed by this Act.

Short title, extent, and commencement.

169.—(1) This Act may be cited as the Bankruptcy Act, 1914.

(2) This Act shall not, except so far as is expressly provided, extend to Scotland or Ireland.

(3) This Act shall come into operation on the first day of January nineteen hundred and fifteen.

SCHEDULES.

THE FIRST SCHEDULE.

Section 13.

Meetings of Creditors.

1. The first meeting of creditors shall be summoned for a day not later than fourteen days' after the date of the receiving order, unless the court for any special reason deem it expedient that the meeting be summoned for a later day.

2. The official receiver shall summon the meeting by giving not less than six clear days notice of the time and place thereof in the London Gazette and in a local paper.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the cause of his failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.

5. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the court, or so requested by a creditor in accordance with the provisions of this Act.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security

as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum : Provided that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver of the debtor's estate, or by some other official receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment, or of any commissioner to administer oaths in the Supreme Court.

17. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.

18. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters :—

(*a*) For or against any specific proposal for a composition or scheme of arrangement ;

(*b*) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection ;

(*c*) On all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof.

20. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

21. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

22. A creditor may appoint the official receiver of the debtor's estate to act in manner prescribed as his general or special proxy.

23. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

24. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

25. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven nor more than twenty-one days.

26. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

27. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor : Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

28. The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

THE SECOND SCHEDULE.

Section 32.

Proof of Debts.

Proof in ordinary cases.

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the cost of proving his debt, unless the court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

9. Formal proof of debts in respect of contributions payable under the National Insurance Act, 1911, to which priority is given by this Act, shall not be required except in cases where it may otherwise be provided by rules under this Act.

1 & 2 Geo. 5, c. 55.

Proof by secured Creditors.

10. If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

11. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

12. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect to the balance due to him after deducting the value so assessed.

13.—(*a*) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.

(*b*) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase.

(*c*) Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

14. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the court, that the valuation and proof were made bonâ fide on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the court shall order, unless the trustee shall allow the amendment without application to the court.

15. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

16. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of rule 13, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

17. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

18. Subject to the provisions of rule 13, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Act.

Proof in respect of Distinct Contracts.

19. If a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstances that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proofs in respect of the contracts, against the properties respectively liable on the contracts.

Periodical Payments.

20. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

21. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt payable at a future time.

22. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or Rejection of Proofs.

23. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

24. If the trustee thinks that a proof has been improperly admitted, the court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

25. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the court may, on the application of the creditor, reverse or vary the decision.

26. The court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

27. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

28. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

Section 99.

THE THIRD SCHEDULE.

List of Metropolitan County Courts.

The Bloomsbury County Court of Middlesex.
The Bow County Court of Middlesex.
The Brompton County Court of Middlesex.
The Clerkenwell County Court of Middlesex.
The Lambeth County Court of Surrey.
The Marylebone County Court of Middlesex.
The Shoreditch County Court of Middlesex.
The Southwark County Court of Surrey.
The Westminster County Court of Middlesex.
The Whitechapel County Court of Middlesex.

Section 131.

THE FOURTH SCHEDULE.

Re-enactment of Provisions relating to pre-1884 Bankruptcies.

46 & 47 Vict. c. 52. s. 153 (4) & (5).

(4) On the occurrence at any time after the passing of this Act of any vacancy in the office of any person who has under subsection (4) of section one hundred and fifty-three of the Bankruptcy Act, 1883, been appointed to perform the remaining duties of any of the officers mentioned in subsection (2) of that section, the Board of Trade may, with the approval of the Treasury, appoint a fit person to fill the vacancy, and all estates, rights and effects, which at the time of the vacancy are by virtue of the said section vested in the officer whose office is so vacated, shall by virtue of such appointment, become vested in the person so appointed, provided that any person so appointed shall be an officer of the Board of Trade, and shall in all respects act under the directions of the Board of Trade.

(5) The Board of Trade may, with the approval of the Lord Chancellor, from time to time direct that any duties or functions not of a judicial character relating to any bankruptcies, insolvencies, or other proceedings under any Act prior to the Bankruptcy Act, 1869, which were at the time of the passing of the Bankruptcy Act, 1883, performed or exercised by registrars of county courts, shall devolve on and be performed by the official receiver, and thereupon all powers and authorities of the registrar, and all estates, rights and effects vested in the registrar, shall become vested in the official receiver.

s. 159.

In every liquidation by arrangement under the Bankruptcy Act, 1869, which was pending at the commencement of the Bankruptcy Act, 1883, if at any time there is no trustee acting under the liquidation by reason of death or for any other cause, such of the official receivers of bankrupts' estates as is appointed by the Board of Trade for that purpose shall become and be the trustee in the liquidation, and the property of the liquidating debtor shall pass to and vest in him accordingly; but this provision shall not prejudice the right of the creditors in the liquidation to appoint a new trustee in the manner directed by the Bankruptcy Act, 1869, or the rules thereunder; and on such appointment the property of the liquidating debtor shall pass to and vest in the new trustee.

The provisions of this Act with respect to the duties and responsibilities of and accounting by a trustee in a bankruptcy under this Act shall apply, as nearly as may be, to a trustee acting under the provisions of this section.

Where a bankruptcy or liquidation by arrangement under the Bankruptcy Act, 1869, has been or is hereafter closed, any property of the bankrupt or liquidating debtor which vested in the trustee and has not been realised or distributed shall vest in such person as may be appointed by the Board of Trade for that purpose and he shall thereupon proceed to get in, realise, and distribute the property in like manner and with and subject to the like powers and obligations, as far as applicable, as if the bankruptcy or liquidation were continuing and he were acting as trustee thereunder. s. 160.

In every bankruptcy under the Bankruptcy Act, 1869, pending at the commencement of the Bankruptcy Act, 1883, where a registrar of the London Bankruptcy Court or of any county court would hereafter but for this enactment become the trustee under the bankruptcy, such of the official receivers of bankrupts' estates as may be appointed by the Board of Trade for that purpose shall be the trustee in the place of the registrar, and the property of the bankrupt shall pass to and vest in the Official Receiver accordingly. s. 161.

(1) A debtor who has been adjudged bankrupt, or whose affairs have been liquidated by arrangement under the Bankruptcy Act, 1869, or any previous Bankruptcy Act, and who has not obtained his discharge, may apply to the court for an order of discharge, and thereupon the court shall appoint a day for hearing the application in open court. 50 & 51 Vict. c. 66. s. 2.

(2) Notice of the appointment by the court of the day for hearing the application for discharge shall, twenty-one days at least before the day so appointed, be sent by the debtor to each creditor who has proved in the bankruptcy or liquidation, or to those of them whose addresses appear in the debtor's statement of affairs or are known to the debtor, and shall also, fourteen days at least before the day so appointed, be published in the "London Gazette."

(3) On the hearing of the application the court may hear any creditor, and may put such questions to the debtor and receive such evidence as the court thinks fit, and, on being satisfied that the notice required by this section has been duly sent and published, may either grant or refuse the order of discharge or suspend the operation of the order for a specified time, or grant the order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the debtor, or with respect to his after-acquired property :

Provided that the court shall refuse the discharge in all cases where the court is satisfied by evidence that the debtor has committed any misdemeanour under Part II. of the Debtors Act, 1869, or any amendment thereof.

(4) The Court may, as one of the conditions referred to in this section, require the debtor to consent to judgment being entered against him in the court having jurisdiction in the bankruptcy or liquidation by the official receiver of the court, or the trustee or assignee in the bankruptcy or liquidation, for any balance of the debts provable under the bankruptcy or liquidation which is not satisfied at the date of the discharge, or for such sum as the court shall think fit, but in such case execution shall not be issued on the judgment without the leave of the court, which leave may be given on proof that the debtor has since his discharge acquired property or income available for payment of his debts.

(5) A discharge granted under this section shall have the same effect as if it had been granted in pursuance of the Act under which the debtor was adjudged bankrupt or liquidated his affairs by arrangement.

(1) In each of the following cases, that is to say— s. 4.

(*a*) Any insolvency under any Act for the relief of insolvent debtors ;

(*b*) Any commission, fiat, or adjudication in bankruptcy within the jurisdiction of the old London Bankruptcy Court, under any Act prior to the Bankruptcy Act, 1869 ;

(*c*) Any administration by way of arrangement pursuant to an Act of the session held in the seventh and eighth years of the reign of Her Majesty Queen Victoria, chapter seventy,

entitled "An Act for facilitating arrangements between Debtors and Creditors," or pursuant to the provisions of the Bankrupt Law Consolidation Act, 1849, or the hundred and ninety-second section of the Bankruptcy Act, 1861, within the jurisdiction of the old London Bankruptcy Court;

in which the estate is now vested in a creditors' assignee, or trustee, or inspector, either alone or jointly with the official assignee, the court may at any time, upon the application of any creditor and upon being satisfied that there is good ground for removing such creditors' assignee, trustee, or inspector, or in any other case in which it shall appear to the court just or expedient, appoint the official assignee or any person appointed under the one hundred and fifty-third section of the Bankruptcy Act, 1883, to perform the remaining duties of the office of official assignee to be sole assignee, or trustee, or inspector of the estate in the place of such creditors' assignee, trustee, or inspector, as the case may be.

(2) Such appointment shall operate as a removal of the creditors' assignee, trustee, or inspector of the estate, and shall vest the whole of the property of the bankrupt or debtor in the official assignee or person appointed by the Board of Trade, as aforesaid, alone; and all estate, rights, powers, and duties of such former creditors' assignee, trustee, or inspector shall thereupon vest in and devolve upon the official assignee or person appointed by the Board of Trade, as aforesaid, alone.

s. 6. (1) Where on the close of a bankruptcy or liquidation, or on the release of a trustee, a registrar or official receiver or official assignee is or is acting as trustee, and where under section one hundred and fifty-nine, section one hundred and sixty, or section one hundred and sixty-one of the Bankruptcy Act, 1883, either as originally enacted or as re-enacted in this schedule, an official receiver is or is acting as trustee, no liability shall attach to him personally in respect of any act done, or default made, or liability incurred by any prior trustee.

(2) Section ninety-three of this Act (which section relates to the release of a trustee) shall, with the exception of subsection five thereof, apply to an official receiver or an official assignee when he is or is acting as trustee, and when an official receiver or official assignee has been released under that section, he shall continue to act as trustee for any subsequent purposes of the administration of the debtors' estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred, before his release.

s. 7. All books and papers in the custody of an official receiver or official assignee or of the Acting Comptroller in Bankruptcy, and relating to any bankruptcy under the Bankruptcy Act, 1869, may, on the expiration of one year after the close of the bankruptcy, be disposed of in accordance with rules made under section one of the Public Records Office Act, 1877, and that section shall apply accordingly.

s. 8. (1) General rules for carrying into effect the objects of the foregoing sections of the Bankruptcy (Discharge and Closure) Act, 1877, as re-enacted in this Schedule, may from time to time be made, revoked, or altered by the same authority, and subject to the same provisions as general rules carrying into effect the objects of this Act.

(2) There shall be paid in respect of proceedings under such foregoing sections such fees as the Lord Chancellor may, with the sanction of the Treasury, from time to time prescribe, and the Treasury may direct by whom, and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

THE FIFTH SCHEDULE.

Section 153.

STATUTES RELATING TO UNCLAIMED DIVIDENDS.

Session and Chapter.	Title of Act.
7 & 8 Vict. c. 70 . .	An Act for facilitating arrangements between debtors and creditors.
12 & 13 Vict. c. 106 .	The Bankruptcy Law Consolidation Act, 1849.
24 & 25 Vict. c. 134 .	The Bankruptcy Act, 1861.
32 & 33 Vict. c. 71 .	The Bankruptcy Act, 1869.

THE SIXTH SCHEDULE.

Section 168.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
32 & 33 Vict. c. 62.	The Debtors Act, 1869	Sections eleven, twelve, fourteen, fifteen, and sixteen.
45 & 46 Vict. c. 75.	The Married Women's Property Act, 1882.	Subsection (5) of section one, and section three so far as they relate to England and Wales.
46 & 47 Vict. c. 52.	The Bankruptcy Act, 1883.	The whole Act, except sections one, two, thirty-two, thirty-three, thirty-four, one hundred and twenty-two, one hundred and forty-five, and one hundred and forty-six, and except sections forty-two and one hundred and twenty-seven so far as they relate to cases of orders under section one hundred and twenty-two of the said Act.
47 & 48 Vict. c. 9.	The Bankruptcy Appeals (County Courts) Act, 1884.	The whole Act.
48 & 49 Vict. c. 47.	The Bankruptcy (Office Accommodation) Act, 1885.	The whole Act.
49 & 50 Vict. 12. c.	The Bankruptcy (Office Accommodation) Act, 1886.	The whole Act.
50 & 51 Vict. c. 66.	The Bankruptcy (Discharge and Closure) Act, 1887.	The whole Act.
51 & 52 Vict. c. 62.	The Preferential Payments in Bankruptcy Act, 1888.	The whole Act so far as unrepealed.

Session and Chapter.	Short Title.	Extent of Repeal.
53 & 54 Vict. c. 71.	The Bankruptcy Act, 1890.	The whole Act, except sections nine, twelve, and twenty-five, and subsection one of section thirty-one, and except section twenty-eight so far as it relates to cases of orders under section one hundred and twenty-two of the Bankruptcy Act, 1883.
54 & 55 Vict. c. 21.	The Savings Banks Act, 1891.	Section thirteen.
3 & 4 Geo. 5, c. 34.	The Bankruptcy Act, 1913.	Part I. (except sections fifteen and twenty-seven, and except subsection (1) of section eighteen so far as it relates to cases of orders under section one hundred and twenty-two of the Bankruptcy Act, 1883), and in section forty-two the words from "and Part I. of this Act" to "the Bankruptcy Acts, 1883 to 1913," and subsection (3), Schedule I, and (except so far as it amends section twenty-five of the Bankruptcy Act, 1890) Schedule II.

APPENDIX I

Deeds of Arrangement Act, 1914.

[4 & 5 Geo. 5. Ch. 47.]

ARRANGEMENT OF SECTIONS. A.D. 1914.

PART I.

APPLICATION OF ACT.

Section.

1. Deeds of arrangement to which Act applies.

PART II.

AVOIDANCE OF DEEDS OF ARRANGEMENT WHERE STATUTORY CONDITIONS NOT COMPLIED WITH.

2. Avoidance of unregistered deeds of arrangement.
3. Avoidance of deeds of arrangement unless assented to by a majority of the creditors.

PART III.

REGISTRATION OF DEEDS OF ARRANGEMENT.

4. Registrar and office for registration.
5. Mode of registration.
6. Form of register.
7. Rectification of register.
8. Time for registration.
9. Inspection of register and registered deeds.
10. Local registration of copy of deeds.

PART IV.

PROVISIONS AS TO TRUSTEES.

11. Security by trustee.
12. Penalty on trustee acting when deed of arrangement void.
13. Transmission of accounts to Board of Trade.
14. Transmission of accounts to creditors.
15. Audit of accounts.
16. Payment of undistributed moneys into court.
17. Preferential payment to creditor an offence.
18. Power to bankruptcy courts to appoint new trustee.
19. Provisions for the protection of trustees under void deeds.
20. Notice to creditors of avoidance of deed.
21. Payment of expenses incurred by trustees.
22. Application of Part IV.

PART V.

GENERAL.

Section.
23. Courts in which applications for enforcement of trusts to be made.
24. Relation to bankruptcy law.
25. Office copies.
26. Fees.
27. Returns to Board of Trade.
28. Rules.
29. Affidavits.
30. Interpretation of terms.
31. Repeals and savings.
32. Short title, extent, and commencement.
SCHEDULE.

Chapter 47.

A.D. 1914.

An Act to consolidate the Law relating to Deeds of Arrangement. [10th August 1914.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

APPLICATION OF ACT.

Deeds of arrangement to which Act applies.

1.—(1) A deed of arrangement to which this Act applies shall include any instrument of the classes hereinafter mentioned whether under seal or not—

(*a*) made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally ;

(*b*) made by, for or in respect of the affairs of a debtor who was insolvent at the date of the execution of the instrument for the benefit of any three or more of his creditors :

otherwise than in pursuance of the law for the time being in force relating to bankruptcy.

(2) The classes of instrument hereinbefore referred to are—

(*a*) an assignment of property ;

(*b*) a deed of or agreement for a composition ;

and in cases where creditors of the debtor obtain any control over his property or business—

(*c*) a deed of inspectorship entered into for the purpose of carrying on or winding up a business ;

(*d*) a letter of licence authorising the debtor or any other person to manage, carry on, realise or dispose of a business with a view to the payment of debts ; and

(*e*) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise or dispose of the debtor's business with a view to the payment of his debts.

Part II.

Avoidance of Deeds of Arrangement where Statutory Conditions not complied with.

Avoidance of unregistered deeds of arrangement.

2. A deed of arrangement shall be void unless it is registered with the Registrar of Bills of Sale under this Act within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed in any place out of England, then within seven clear days after the time at which it would, in the ordinary course of post, arrive in England, if posted within one week after the execution thereof, and unless it bears such ordinary and ad valorem stamp as is provided by this Act.

Avoidance of deeds of arrangement unless assented to by a majority of the creditors.

3.—(1) A deed of arrangement, which either is expressed to be or is in fact for the benefit of a debtor's creditors generally, shall be void unless, before or within twenty-one days after the registration thereof, or within such extended time as the High Court or the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may allow, it has received the assent of a majority in number and value of the creditors of the debtor.

(2) The list of creditors annexed to the affidavit of the debtor filed on the registration of the deed of arrangement shall be primâ facie evidence of the names of the creditors and the amounts of their claims.

(3) The assent of a creditor for the purposes of subsection (1) of this section shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness, but not otherwise.

(4) The trustee shall file with the Registrar of Bills of Sale at the time of the registration of a deed of arrangement, or, in the case of a deed of arrangement assented to after registration, within twenty-eight days after registration or within such extended time as the High Court or the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may allow, a statutory declaration by the trustee that the requisite majority of the creditors of the debtor have assented to the deed of arrangement, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be primâ facie evidence, of the fact declared.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value but not in the majority in number.

Part III.

Registration of Deeds of Arrangement.

Registrar and office for registration.

4.—(1) The Registrar of Bills of Sale shall be the registrar for the purpose of this Act.

(2) The Bills of Sale Department of the Central Office of the Supreme Court shall be the office for the registration of deeds of arrangement.

Mode of registration.

5.—(1) The registration of a deed of arrangement under this Act shall be effected in the following manner:—

A true copy of the deed, and of every schedule or inventory thereto annexed, or therein referred to, shall be presented to and filed with the registrar within seven clear days after the execution of the deed (in like manner as a bill of sale given by way of security for the payment of money is required to be filed),

together with an affidavit verifying the time of execution, and containing a description of the residence and occupation of the debtor, and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of his creditors.

(2) No deed shall be registered under this Act unless the original of the deed, duly stamped with the proper inland revenue duty, and in addition to such duty a stamp denoting a duty computed at the rate of one shilling for every hundred pounds or fraction of a hundred pounds of the sworn value of the property passing, or (where no property passes under the deed) the amount of composition payable under the deed, is produced to the registrar at the time of such registration.

Form of register.

6. The registrar shall keep a register wherein shall be entered, as soon as conveniently may be after the presentation of a deed for registration, an abstract of the contents of every deed of arrangement registered under this Act, containing the following and any other prescribed particulars :—

(*a*) The date of the deed ;

(*b*) The name, address, and description of the debtor, and the place or places where his business was carried on at the date of the execution of the deed, and the title of the firm or firms under which the debtor carried on business, and the name and address of the trustee (if any) under the deed ;

(*c*) A short statement of the nature and effect of the deed, and of the composition in the pound payable thereunder ;

(*d*) The date of registration ;

(*e*) The amount of property and liabilities included under the deed, as estimated by the debtor.

Rectification of register.

7. The High Court or a judge thereof, upon being satisfied that the omission to register a deed of arrangement within the time required by this Act or that the omission or misstatement of the name, residence, or description of any person was accidental or due to inadvertence, or to some cause beyond the control of the debtor and not imputable to any negligence on his part, may, on the application of any party interested, and on such terms and conditions as are just and expedient, extend the time for registration, or order the omission or misstatement to be supplied or rectified by the insertion in the register of the true name, residence, or description.

Time for registration.

8. Where the time for registering a deed of arrangement expires on a Sunday, or other day on which the registration office is closed, the registration shall be valid if made on the next following day on which the office is open.

Inspection of register and registered deeds.

9. Any person shall be entitled, at all reasonable times, to search the register on payment of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled, at all reasonable times, to inspect, examine, and make extracts from any registered deed of arrangement, without being required to make a written application or to specify any particulars in reference thereto, upon payment of one shilling, or such other fee as may be prescribed, for each deed of arrangement inspected :

Provided that the extracts shall be limited to the dates of execution and of registration, the names, addresses, and descriptions of the debtor and of the parties of the deed, a short statement of the nature and effect of the deed, and any other prescribed particulars.

Local registration of copy of deeds.

10.—(1) Where the place of business or residence of the debtor who is one of the parties to a deed of arrangement, or who is referred to therein, is situate in some place outside the London Bankruptcy District, the registrar shall, within three clear days after registration, and in accordance with the prescribed directions, transmit a copy of the deed to the registrar of the county court in the district of which such place of business or residence is situate.

(2) Every copy so transmitted shall be filed, kept and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of, the registered copy, in the like manner and upon the like terms, as to payment or otherwise, as near as may be, as in the case of deeds registered under this Act.

Part IV.

Provisions as to Trustees.

Security by trustee.

11.—(1) The trustee under a deed of arrangement shall, within seven days from the date on which the statutory declaration certifying the assent of the creditors is filed, give security in the prescribed manner to the registrar of the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, or, if he then resided or carried on business in the London Bankruptcy district, to the senior bankruptcy registrar of the High Court, in a sum equal to the estimated assets available for distribution amongst the unsecured creditors as shown by the affidavit filed on registration, to administer the deed properly and account fully for the assets which come to his hands, unless a majority in number and value of the debtor's creditors, either by resolution passed at a meeting convened by notice to all the creditors, or by writing addressed to the trustee, dispense with his giving such security :

Provided that, when such a dispensation has been so given, the trustee shall forthwith make and file with the Registrar of Bills of Sale a statutory declaration to that effect, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be primâ facie evidence, of the facts declared.

(2) If a trustee under a deed of arrangement fails to comply with the requirements of this section, the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, on the application of any creditor and after hearing such persons as it may think fit, may declare the deed of arrangement to be void or may take an order appointing another trustee in the place of the trustee appointed by the deed of arrangement.

(3) A certificate that the security required by this section has been given by a trustee, signed by the registrar to whom it was given and filed with the Registrar of Bills of Sale, shall be conclusive evidence of the fact.

(4) All moneys received by a trustee under a deed of arrangement shall be banked by him to an account to be opened in the name of the debtor's estate.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value but not in the majority in number.

Penalty on trustee acting when deed of arrangement void.

12. If a trustee acts under a deed of arrangement—

(*a*) after it has to his knowledge become void by reason of non-compliance with any of the requirements of this Act or any enactment repealed by this Act; or

(*b*) after he has failed to give security within the time and in the manner provided for by this Act or any enactment repealed by this Act,

he shall be liable on summary conviction to a fine not exceeding five pounds for every day between the date on which the deed became void or the expiration of the time within which security should have been given, as the case may be, and the last day on which he is proved to have acted as trustee, unless he satisfies the court before which he is accused that his contravention of the law was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate.

Transmission of accounts to Board of Trade.

13.—(1) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the Board of Trade, or as they direct, an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner.

(2) If any trustee fails to transmit such account, he shall be liable on summary conviction to a fine not exceeding five pounds for each day during which the default continues, and the judge of the High Court to whom bankruptcy business has been assigned may, for the purpose of enforcing the provisions of the last preceding subsection, exercise, on the application of the Board of Trade, all the powers conferred on the court by subsection (5) of section one hundred and five of the Bankruptcy Act, 1914, in cases of bankruptcy.

4 & 5 Geo. 5, c. 59.

(3) The accounts transmitted to the Board of Trade in pursuance of this section shall be open to inspection by the debtor or any creditor or other person interested on payment of the prescribed fee, and copies of or extracts from the accounts shall, on payment of the prescribed fee, be furnished to the debtor, the creditors, or any other persons interested.

(4) In this section the expression "trustee" shall include any person appointed to distribute a composition or to act in any fiduciary capacity under any deed of arrangement, and the expression "prescribed" means prescribed by rules under the Bankruptcy Act, 1914.

Transmission of accounts to creditors.

14. Every trustee under a deed of arrangement shall, at the expiration of six months from the date of the registration of the deed, and thereafter at the expiration of every subsequent period of six months until the estate has been finally wound up, send to each creditor who has assented to the deed a statement in the prescribed form of the trustee's accounts and of the proceedings under the deed down to the date of the statement, and shall, in his affidavit verifying his accounts transmitted to the Board of Trade, state whether or not he has duly sent such statements, and the dates on which the statements were sent; and, if a trustee fails to comply with any of the provisions of this section, the High Court may, for the purpose of enforcing those provisions, exercise on the application of the Board of Trade all the powers conferred on the court by subsection (5) of section one hundred and five of the Bankruptcy Act, 1914, in cases of bankruptcy.

Audit of accounts.

15.—(1) Where, in the course of the administration of the estate of a debtor who has executed a deed of arrangement, or within twelve months from the date when the final accounts of the estate were rendered to the Board of Trade, an application in writing is made to the Board by a majority in number and value of the creditors who have assented to the deed for an official audit of the trustee's accounts, the Board may cause the trustee's accounts to be audited, and in such case all the provisions of the Bankruptcy Act, 1914, relating to the institution and enforcement of an audit of the accounts of a trustee in bankruptcy (including the provisions as to fees) shall, with necessary modifications, apply to the audit of the trustee's accounts, and the Board shall have power on the audit to require production of a certificate for the taxed costs of any solicitor whose costs have been paid or charged by the trustee, and to

disallow the whole or any part of any costs in respect of which no certificate is produced.

(2) The Board of Trade may determine how and by what parties the costs, charges and expenses of and incidental to the audit (including any prescribed fees chargeable in respect thereof) are to be borne, whether by the applicants or by the trustee or out of the estate, and may, before granting an application for an audit, require the applicants to give security for the costs of the audit.

Payment of undistributed moneys into court.

16. At any time after the expiration of two years from the date of the registration of a deed of arrangement, the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may, on the application of the trustee or a creditor, or on the application of the debtor, order that all moneys representing unclaimed dividends and undistributed funds then in the hands of the trustee or under his control be paid into court.

Preferential payment to creditor an offence.

17. If a trustee under a deed of arrangement pays to any creditor out of the debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then, unless the deed authorises him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful in a bankruptcy, he shall be guilty of a misdemeanour.

Power to bankruptcy courts to appoint new trustees. 56 & 57 Vict. c. 53.

18. The power to appoint a new trustee or new trustees under section twenty-five of the Trustee Act, 1893, may, in the case of a deed of arrangement, be exercised either by the High Court or by the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, and the provisions of that section shall apply accordingly.

Provisions for the protection of trustees under void deeds.

19.—(1) Where a deed of arrangement is void by reason that the requisite majority of creditors have not assented thereto, or, in the case of a deed for the benefit of three or more creditors, by reason that the debtor was insolvent at the time of the execution of the deed and that the deed was not registered as required by this Act, but is not void for any other reason, and a receiving order is made against the debtor upon a petition presented after the lapse of three months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in the bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

(2) Where a receiving order is made against a debtor under subsection (5) of section one hundred and seven of the Bankruptcy Act, 1914, this section shall apply if the receiving order was made after the lapse of three months from the execution of the deed.

Notice to creditors of avoidance of deed.

20. When a deed of arrangement is void by virtue of this Act for any reason other than that, being for the benefit of creditors generally, it has not been registered within the time allowed for the purpose by this Act, the trustee shall, as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows, and file a copy of the notice with the Registrar of Bills of Sale, and, if he fails to do so, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

Payment of expenses incurred by trustees.

21. Where a deed of arrangement is avoided by reason of the bankruptcy of the debtor, any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this Act shall be allowed or paid him by the trustee in the bankruptcy as a first charge on the estate.

Application of Part IV.

22. The provisions of this part of this Act, except such of those provisions—

(*a*) as relate to the transmission of accounts to the Board of Trade ;
(*b*) as provide for the protection of trustees under void deeds ;
(*c*) as require a notice to be given to creditors of avoidance of deeds ;
(*d*) as provide for the payment of expenses incurred by trustees ;

shall not apply to a deed of arrangement made for the benefit of any three or more of the debtor's creditors unless it is in fact for the benefit of the debtor's creditors generally.

Part V.

General.

Courts in which applications for enforcement of trusts to be made.

23. Any application by the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed :

Provided that any question as to whether any person claiming to be a creditor entitled to the benefit of a deed of arrangement is so entitled may, subject to rules made under this Act, be decided either by the court having such jurisdiction as aforesaid or by the High Court.

Relation to bankruptcy law.

24.—(1) If the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, serves in the prescribed manner on any creditor of the debtor notice in writing of the execution of the deed and of the filing of the statutory declaration certifying the creditors' assents with an intimation that the creditor will not after the expiration of one month from the service of the notice be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or on any other act committed by him in the course or for the purpose of the proceedings preliminary to the execution of the deed as an act of bankruptcy, that creditor shall not, after the expiration of that period, unless the deed becomes void, be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or any act so committed by him as an act of bankruptcy.

(2) Where such a deed of arrangement as aforesaid has become void by virtue of this Act or any enactment repealed by this Act, the fact that a creditor has assented to the deed shall not disentitle him to present a bankruptcy petition founded on the execution of the deed of arrangement as an act of bankruptcy.

(3) Save as otherwise expressly provided by this Act, nothing in this Act shall be construed as repealing or shall affect any provision of the law for the time being in force in relation to bankruptcy or shall give validity to any deed or instrument which by law is an act of bankruptcy or void or voidable.

Office copies.

25. Subject to the provisions of this Act, and to any rules made thereunder, any person shall be entitled to have an office copy of, or extract from, any deed registered under this Act, upon paying for it at the like rate as for office copies of judgments of the High Court, and any copy or extract purporting to be an office copy or extract shall, in all courts and before all arbitrators or other persons, be admitted as primâ facie evidence thereof, and of the fact and date of registration as shown thereon.

Fees.

26.—(1) There shall be taken, in respect of the registration of deeds of arrangement, and in respect of any office copies or extracts, or official searches made by the registrar, such fees as may be from time to time prescribed; and nothing in this Act contained shall make it obligatory on the registrar to do, or permit to be done, any act in respect of which any fee is specified or prescribed, except on payment of such fee.

38 & 39 Vict. c. 77, s. 27.

(2) Section twenty-six of the Supreme Court of Judicature Act, 1875, as amended by any subsequent enactment, shall apply to fees under this Act, and orders under that section may, if need be, be made in relation to such fees accordingly.

Returns to Board of Trade.

27. The general annual report which, by section one hundred and thirty-six of the Bankruptcy Act, 1914, the Board of Trade is required to cause to be prepared and laid before Parliament, shall include a report of proceedings under this Act, and, for the purposes of such report, the Registrar of Bills of Sale shall make to the Board of Trade such returns of the registration of deeds of arrangement, at such times, and in such manner and form, as may be prescribed.

Rules.

28. Rules for carrying this Act into effect may be made in like manner as rules may be made under and for the purposes of the Judicature Acts, 1873 to 1910.

Affidavits.

29. An affidavit required by or for the purposes of this Act may be sworn before a Master of the Supreme Court or before any person empowered to take affidavits in the Supreme Court or before any other person before whom such an affidavit may, by any law for the time being in force, be sworn, but this section shall not apply to an affidavit required for the purposes of this Act by virtue of rules made under the Bankruptcy Act, 1914.

Interpretation of terms.

30.—(1) In this Act, unless the context otherwise requires,—

"Creditors generally" includes all creditors who may assent to, or take the benefit of, a deed of arrangement;

"Prescribed" means prescribed by rules made under this Act;

"Property" has the same meaning as in the Bankruptcy Act, 1914;

"Rules" includes forms.

(2) For the purpose of determining the number of creditors for whose benefit a deed is made, any two or more joint creditors shall be treated as a single creditor.

Repeals and savings.

31.—(1) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

(2) This Act shall apply to proceedings commenced under any enactment repealed by this Act and pending at the commencement of this Act, as if commenced under this Act.

(3) Until revoked or altered under the powers of this Act, rules made under any enactment repealed by this Act, and in force at the commencement of this Act, shall continue in force, and shall have effect as if made under this Act.

(4) The provisions of this Act shall apply to and in respect of a deed of arrangement executed before the commencement of this Act only if and so far as the corresponding provisions of the enactments repealed by this Act would have applied to or in respect of such deed if this Act had not been passed.

Short title, extent, and commencement.

32.—(1) This Act may be cited as the Deeds of Arrangement Act, 1914.

(2) This Act shall not extend to Scotland or Ireland.

(3) This Act shall come into operation on the first day of January nineteen hundred and fifteen.

SCHEDULE.

Section 31.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
50 & 51 Vict. c. 57.	The Deeds of Arrangement Act, 1887.	The whole Act, except so far as it relates to Ireland.
53 & 54 Vict. c. 71.	The Bankruptcy Act, 1890.	Section twenty-five.
3 & 4 Geo. 5, c. 34.	The Bankruptcy and Deeds of Arrangement Act, 1913.	Sections twenty-seven to forty-one; in section forty-two from "and Part II. of this Act" to "extend to Ireland"; and Schedule II. so far as unrepealed

APPENDIX J

Arbitration Act, 1889.

[52 & 53 Vict. Ch. 49.]

ARRANGEMENT OF SECTIONS. A.D. 1889.

References by Consent out of Court.

Section.

1. Submission to be irrevocable, and to have effect as an order of court.
2. Provisions implied in submissions.
3. Reference to official referee.
4. Power to stay proceedings where there is a submission.
5. Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.
6. Power for parties in certain cases to supply vacancy.
7. Powers of arbitrators.
8. Witnesses may be summoned by subpœna.
9. Power to enlarge time for making award.
10. Power to remit award.
11. Power to set aside award.
12. Enforcing award.

References under Order of Court.

13. Reference for report.
14. Power to refer in certain cases.
15. Powers and remuneration of referees and arbitrators.
16. Court to have powers as in references by consent.
17. Court of Appeal to have powers of court.

General.

18. Power to compel attendance of witness in any part of the United Kingdom, and to order habeas corpus to issue.
19. Statement of case pending arbitration.
20. Costs.
21. Exercise of powers by masters and other officers.
22. Penalty for perjury.
23. Crown to be bound.
24. Application of Act to references under statutory powers.
25. Saving for pending arbitrations.
26. Repeal.
27. Definitions.
28. Extent.
29. Commencement.
30. Short title.

SCHEDULES.

CHAPTER 49.

A.D. 1889.

An Act for amending and consolidating the Enactments relating to Arbitration. [26th August 1889.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

References by Consent out of Court.

Submission to be irrevocable, and to have effect as an order of court.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect in all respects as if it had been made an order of Court.

Provisions implied in submissions.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission.

Reference to official referee.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the Court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

Power to stay proceedings where there is a submission.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

5. In any of the following cases :—

(*a*) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator :

(*b*) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy :

(*c*) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him :

(*d*) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy :

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the Court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent to all parties.

Power for parties in certain cases to supply vacancy.

6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

(*a*) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

(*b*) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court or a judge may set aside any appointment made in pursuance of this section.

Powers of arbitrator.

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

(*a*) to administer oaths to or take the affirmations of the parties and witnesses appearing; and

(*b*) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and

(*c*) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Witnesses may be summoned by subpœna.

8. Any party to a submission may sue out a writ of subpœna ad testificandum, or a writ of subpœna duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

Power to enlarge time for making award.

9. The time for making an award may from time to time be enlarged by order of the Court or a judge, whether the time for making the award has expired or not.

Power to remit award.

10.—(1) In all cases of reference to arbitration the Court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

Power to set aside award.

11.—(1) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

Enforcing award.

12. An award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect.

References under Order of Court.

Reference for report.

13.—(1) Subject to Rules of Court and to any right to have particular cases tried by a jury, the Court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee.

(2) The report of an official or special referee may be adopted wholly or partially by the Court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

Power to refer in certain cases.

14. In any cause or matter (other than a criminal proceeding by the Crown),—

(*a*) If all the parties interested who are not under disability consent: or,

(*b*) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court or a judge conveniently be made before a jury or conducted by the Court through its other ordinary officers: or,

(*c*) If the question in dispute consists wholly or in part of matters of account;

the Court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the Court.

Powers and remuneration of referees and arbitrators.

15.—(1) In all cases of reference to an official or special referee or arbitrator under an order of the Court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by Rules of Court, and subject thereto as the Court or a judge may direct.

(2) The report or award of any official or special referee or arbitrator on any such reference shall, unless set aside by the Court or a judge, be equivalent to the verdict of a jury.

(3) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the Court or a judge shall be determined by the Court or a judge.

Court to have powers as in references by consent.

16. The Court or a judge shall, as to references under order of the Court or a judge, have all the powers which are by this Act conferred on the Court or a judge as to references by consent out of Court.

Court of Appeal to have powers of court.

17. Her Majesty's Court of Appeal shall have all the powers conferred by this Act on the Court or a judge thereof under the provisions relating to references under order of the Court.

General.

Power to compel attendance of witness in any part of the United Kingdom, and to order habeas corpus to issue.

18.—(1) The Court or a judge may order that a writ of subpœna ad testificandum or of subpœna duces tecum shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom.

(2) The Court or a judge may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

Statement of case pending arbitration.

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

Costs.

20. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

Exercise of powers by masters and other officers.

21. Provision may from time to time be made by Rules of Court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the Court or a judge.

Penalty for perjury.

22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

Crown to be bound.

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which Her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party, but nothing in this Act shall empower the Court or a judge to order any proceedings to which Her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of Her Majesty or the Duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the Crown.

Application of Act to reference under statutory powers.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act.

Saving for pending arbitrations.

25. This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

Repeal.

26.—(1) The enactments described in the Second Schedule to this Act are hereby repealed to the extent therein mentioned, but this repeal shall not affect anything done or suffered, or any right acquired or duty imposed or liability incurred, before the commencement of this Act, or the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining or enforcing any such liability.

(2) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

Definitions.

27. In this Act, unless the contrary intention appears,—

"Submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

"Court" means Her Majesty's High Court of Justice.

"Judge" means a judge of Her Majesty's High Court of Justice.

"Rules of Court" means the Rules of the Supreme Court made by the proper authority under the Judicature Acts.

Extent.

28. This Act shall not extend to Scotland or Ireland.

Commencement.

29. This Act shall commence and come into operation on the first day of January one thousand eight hundred and ninety.

Short title.

30. This Act may be cited as the Arbitration Act, 1889.

SCHEDULES.

THE FIRST SCHEDULE.

Provisions to be implied in Submissions.

a. If no other mode of reference is provided, the reference shall be to a single arbitrator.

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

d. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

g. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation.

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
9 Will. 3, c. 15.	An Act for determining differences by arbitration.	The whole Act.
3 & 4 Will. 4, c. 42.	An Act for the further amendment of the law and the better advancement of justice.	Sections thirty-nine to forty-one, both inclusive.
17 & 18 Vict. c. 125.	The Common Law Procedure Act, 1854.	Sections three to seventeen, both inclusive.
36 & 37 Vict. c. 66.	The Supreme Court of Judicature Act, 1873.	Section fifty-six, from "Subject to any Rules of Court," down to "as a judgment by the Court," both inclusive, and the words "special referees or." Sections fifty-seven to fifty-nine, both inclusive.
47 & 48 Vict. c. 61.	The Supreme Court of Judicature Act, 1884.	Sections nine to eleven, both inclusive.

EXAMINATION QUESTIONS

The following Examination Questions have been compiled for the use of students and teachers alike. They are intended to assist students by way of self-examination, and it is hoped that the provision of the questions will assist teachers in setting work for students attending their classes.

The questions are expressly designed to be comprehensive, and in many cases they will be found to be complementary also, e.g., in Question 7 on Chapter 1 the various rules are requested for Offer and Acceptance. To require the rules upon Offer only, or Acceptance only, would leave in the mind of the student a feeling of uncertainty as to his answer ; but if the two aspects of the matter are requested, side by side, the student will be in a better position to answer the whole question fully and with confidence. Confidence on the part of the student, assuming a knowledge of the textual matter, tends to confidence in the examination room, with advantage both to the candidate and to his teacher.

In answering these examination questions, it will be found that, where appropriate, a tabulated answer will give most satisfaction to all concerned, the student will be in a position to visualise with certainty the matter under notice, the presentation of a tabulated answer will tend to inculcate business efficiency methods, whilst such an answer will more readily be appreciated by the teacher or examiner. For example, of the questions relating to Chapter 1, Nos. 2, 4, 5, 6, 7, 12, 18, 19, 21 and 23 may conveniently be answered partly or wholly by this method.

CHAPTER I.—GENERAL LAW OF CONTRACT.

1. Give in your own words a definition of a *Contract.* Is consideration always necessary ?
2. Discuss the principal points of difference between *Specialty Contracts* and *Simple Contracts.*
3. What do you understand by *quasi-contract* ? Give a list of the main types, with examples.
4. What requisites make an agreement a valid contract ?

5. Define *Void, Voidable* and *Unenforceable* contracts, and give examples of each.
6. Define *Consideration.* State the requisites of *Valuable Consideration.*
7. State the rules necessary to be observed in *Offer* and *Acceptance.* Give special attention to contracts made partly or wholly *by post.*
8. To what extent are an Infant's contracts valid ? Deal with the positions of the infant and the other contracting party respectively.
9. How far is it correct to say that a married woman is liable for debts she has contracted ?
10. Is an Alien under any contractual disability ? What decides *enemy status* ? Deal fully with this question.
11. Are contracts in restraint of trade enforceable ? Give your reasons.
12. What is the effect where a contract is incapable of performance ? State the various kinds of *Impossibility of Performance.*
13. What is the effect of *Mistake* in a contract ? Define *Mistake.*
14. Give a definition of *Fraud.* If an untrue statement is made honestly, in the belief that it is true, what is the effect ?
15. What is *privity of contract* ? Is a third party ever liable under a contract ?
16. What are the general rules for the construction to be placed on a contract ? What is *latent ambiguity* ?
17. What law governs a contract made in one country with a view to its being performed in another country ?
18. Give the rules for the assignment of *choses in action.*
19. By what several methods may a contract be discharged ?
20. What is tender ? If tender be refused, does it discharge a contract ?
21. Give the rule in *Clayton's Case* as to appropriation of payments. How does it operate in the case of trust moneys ?
22. What is meant by suing on a *quantum meruit* ?
23. What are the *Statutes of Limitation,* and what is their effect ?

CHAPTER 2.—LAW OF AGENCY.

24. Define *Agency.*
25. Give a classification of Agents. In what common case is a so-called agent not an agent at all ?

26. How may an Agent be appointed ?
27. What are the rights and duties of an Agent ?
28. What remedies has the Principal where the Agent has accepted a bribe ?
29. In what cases is an Agent personally liable ? Deal particularly with *negotiable instruments and deeds.*
30. In what ways may an Agency be terminated ?
31. Define a *mercantile agent.* What are his powers ?
32. Discuss the agency of a wife.

CHAPTER 3.—NEGOTIABLE INSTRUMENTS.

33. Define a *negotiable instrument.*
34. What does *negotiability* imply ?
35. Define a *Bill of Exchange.* Is a Bill of Exchange payable by instalments valid ?
36. What are the essentials of a Bill of Exchange ?
37. Explain what is meant by *a bill payable to order* and *a bill payable to bearer.*
38. Explain and discuss *Days of Grace.*
39. Is an infant liable on a Bill of Exchange ? What was the decision in *In re Soltykoff* ?
40. What is the liability of the acceptor of a Bill of Exchange ?
41. Is consideration in the case of a Bill of Exchange different from consideration in the case of other simple contracts ? Discuss the difference, if any.
42. How can a Bill of Exchange be discharged ?
43. What is known as *the rule in ex parte Waring* ?
44. Define a *Cheque.* What is the effect of taking a "stale" cheque ?
45. Give the rules as to crossed cheques, and state the effects of the Crossed Cheques Act, 1906.
46. How is a banker's authority to pay a cheque terminated ?
47. Define a *Bank Note,* and state what you know of these documents.

CHAPTER 4.—SALE OF GOODS.

48. What is included under the term *goods* ?
49. What is the position where the seller delivers a quantity of goods more or less than he has contracted to sell ?
50. When does the " property " in goods pass to the buyer ?
51. State the provisions of Section 4 of the Sale of Goods Act, 1893, defining carefully all terms that are used in a special sense.
52. Distinguish between *Conditions* and *Warranties*. What warranties are implied on a sale of goods, and what conditions are implied ?
53. What are the exceptions to the rule *Nemo dat quod non habet* ?
54. Discuss sales in *Market overt*.
55. What are the rights of an unpaid seller against the goods forming the subject of the contract ? How are these rights defeated ? Deal thoroughly with the *transit*, showing what rules would assist in deciding its beginning and end.

CHAPTER 5.—LAW OF PARTNERSHIP.

56. Define *Partnership*. Is a Limited Liability Company a partnership within the meaning of the Partnership Act, 1890 ?
57. State the various kinds of partners.
58. What are the provisions of the Registration of Business Names Act, 1916 ?
59. In what ways may a partnership be terminated ? Where there are separate creditors of each partner, and joint creditors of the firm, discuss the question of the distribution of assets.
60. Discuss fully the authority of a partner.
61. What is the liability, and what are the rights, of a partner ?
62. What are the provisions of the Limited Partnerships Act, 1907 ?

CHAPTER 6.—SECURITIES.

63. What is a *Mortgage* ?
64. What are the remedies of the Mortgagee on the default of the Mortgagor ?

65. "Where the equities are equal the law shall prevail." Discuss this maxim in relation to mortgages.
66. What are the requisites of (*a*) an Absolute, and (*b*) a Conditional Bill of Sale? What is the effect of non-compliance with the Acts?
67. Define fully the term *pawn*.
68. State the principal provisions of the Pawnbrokers Act, 1872.
69. Define *Lien*, and state the various kinds subsisting. Does a lien confer a power of sale?

CHAPTER 7.—SHIPPING.

70. What is the necessary procedure to be adopted before a British ship may be registered?
71. State the provisions of the Merchant Shipping Act, 1894, as to ownership of a ship.
72. What papers are carried by a British ship?
73. What are the duties and powers of the Master of a ship?
74. Discuss *General Average*. Explain the *York-Antwerp Rules*.
75. Differentiate between a *Bottomry Bond* and a *Respondentia Bond*. Give the rules in relation to each.
76. Discuss the question of *Salvage*. Is salvage payable for saving the passengers from a wreck?

CHAPTER 8.—INSURANCE.

77. Is a contract of insurance a contract of indemnity? Give reasons.
78. Discuss the doctrine of *Subrogation*.
79. What is *Insurable Interest*? When must it exist in Fire, Life, and Marine insurance respectively?
80. What is meant when it is stated that contracts of Insurance are contracts *uberrimæ fidei*?
81. If a person whose life is insured commits suicide, is the policy void?
82. What is the *contribution clause* in a Fire Insurance policy?
83. What warranties are implied in a Marine Insurance policy? What is the effect on such a policy of (*a*) a breach of warranty

and (*b*) a breach of a representation ? What is the difference between a warranty in Marine Insurance and a warranty under the Sale of Goods Act, 1893.

84. What is the *suing and labouring clause* in a Marine Insurance policy ?

CHAPTER 9.—CARRIAGE AND AFFREIGHTMENT.

85. Define a *Common Carrier*. Are railway companies common carriers ?

86. Discuss the liability of a common carrier.

87. To what extent are railway companies liable as insurers of passengers ?

88. What are the powers and duties of a common carrier ?

89. What is meant by the term *equality clauses* in connection with carriage by railway ?

90. Define (*a*) Charter Party, (*b*) Bill of Lading. What is meant by the *cesser clause* ?

91. What do you understand by *freight* ? Explain the terms *Advance Freight, Dead Freight, Lump-sum Freight,* and *Freight pro rata.*

CHAPTER 10.—SURETYSHIP AND GUARANTEE.

92. What is a contract of suretyship ? Are there any exceptions to the rule that the person for whom the surety is answerable must be under a legal obligation ?

93. State the provisions of the *Statute of Frauds* in relation to guarantees. What tests would you apply to decide whether or not a contract was one of guarantee ?

94. What is a *continuing guarantee* ? Give an example.

95. What are the rights of a surety who has been called upon to pay ?

96. State fully how a surety can be discharged.

97. What are the provisions of *Lord Tenterden's Act* as to representations concerning the credit of another ?

98. Explain fully a *Fidelity Guarantee.*

CHAPTER 11.—STOCK EXCHANGE.

99. Differentiate between *jobbers* and *brokers*.
100. Discuss the agency of a stockbroker.
101. What is the difference between *Gambling* and *Speculation* ?
102. What is meant by the *Settlement* on the Stock Exchange ?
103. Define *a security*, *Inscribed stock*, and *Bonds*.
104. Discuss *transfers of securities*.
105. What are *Options*, and how are they taken up or met ?

CHAPTER 12.—PATENTS, TRADE MARKS, AND COPYRIGHT.

106. What can and what cannot be the subject of the grant of a patent ?
107. To whom may a patent be granted ?
108. Describe the procedure on obtaining a patent.
109. What are the rights of a patentee ? When do they cease ?
110. What are the essentials of a *registrable trade mark* ?
111. Define *Copyright*, and state in whom the ownership of copyright vests.
112. Define the term *Infringement of Copyright*. What are the remedies open to the owner of the copyright ? Are they the same in all classes of original work ?

CHAPTER 13.—LIMITED LIABILITY COMPANIES.

113. What is contained in the *Memorandum of Association* of a company ? Give a complete list of the ways in which it may be altered.
114. What are *Articles of Association* ? Is it necessary for a company to file Articles ?
115. What is a *promoter* ? State his liabilities.
116. What remedies are available against Promoters or Directors for misrepresentation in a prospectus ?
117. Discuss the question of the *Underwriting of shares*, paying particular attention to the payment of commission.
118. What are the rules to be observed as to *Allotments of Shares* ?

119. In connection with share certificates, discuss the liability of a company by estoppel (*a*) as to title, and (*b*) as to payment.

120. Is a company liable in the case of a forged transfer ? Give the main provisions of the Forged Transfers Acts.

121. What are *Share Warrants* ? When a warrant is issued, what results accrue as compared with the issue of a share certificate ?

122. State the several uses of the term *Capital.* What is *Reserve Capital* ?

123. Discuss the various types of (*a*) *Preference Shares,* (*b*) *Ordinary Shares,* and (*c*) *Deferred Shares.*

124. Has a company power to borrow money ? What is a *Debenture* ?

125. Discuss the characteristics of a *Floating Charge.* In what circumstances can a floating charge crystallise ?

126. How and by whom are *Directors* appointed ?

127. Name the various kinds of Meetings a company holds. What business is capable of being transacted at each ?

128. State the various kinds of *Resolutions* of a company, and say for what particular business each is required.

129. State fully the rights and duties of an Auditor to a company.

130. What special advantages accrue to a Private Company ?

131. State the various ways in which a company may cease to exist.

CHAPTER 14.—LAW OF BANKRUPTCY.

132. What procedure is necessary for making a person bankrupt ? Can a debtor present a bankruptcy petition against himself ?

133. What *acts of bankruptcy* are set out in the Bankruptcy Act, 1914, as forming grounds for the presentation of a petition ?

134. Under what conditions may a *petition* be presented by a creditor ?

135. What is a *Receiving Order,* and what are its effects ?

136. Who is the *Official Receiver,* and what are his duties ?

137. Explain fully the doctrine of *relation back.*

138. What are the rules as to *proxies* at meetings of creditors ?

139. Under what circumstances will a debtor be adjudged bankrupt ? What is the effect of the adjudication ?

140. What are the powers and duties of the *Trustee in Bankruptcy* ?

141. Discuss *Committee of Inspection.* Has the Committee any duties in connection with the Trustee's accounts ?

142. Of what does *Divisible Property* consist? Enumerate the "property" which is not divisible. What is "after acquired property," and how can it be dealt with?

143. Discuss the doctrine of *Reputed Ownership*. If a bankrupt held property under an absolute Bill of Sale, how would the doctrine be affected?

144. What do you understand by *Protected transactions*? Name any transactions which may be protected under the provisions of the Acts.

145. Discuss *Fraudulent Preference*. If County Court proceedings were threatened against a debtor, who then paid the full debt, would this be considered a fraudulent preference?

146. What is a *Secured Creditor*, and what courses are open to him? What is the position of a creditor for rent?

147. What debts are provable in bankruptcy, and what debts cannot be expunged by bankruptcy proceedings?

148. What classes of creditors constitute *deferred creditors*?

149. Compare the winding-up of a Limited Liability Company on insolvency with the bankruptcy of a private firm or person.

CHAPTER 15.—ARBITRATION AND AWARDS.

150. Define *Arbitration*. Is this a legal process? Can it be made binding between the parties by previous agreement?

151. How are arbitrations instituted?

152. Discuss the term *The Submission*, and state whether it is essential that it should be in writing.

153. In what cases has the Court power to appoint an Arbitrator?

154. What are the powers and duties of (*a*) an Arbitrator and (*b*) an Umpire?

155. What is *The Award*, and what are its requisites?

156. Can an arbitrator award a dissolution of partnership? Give an example.

157. On what grounds may an *Award* be set aside? How may it be enforced?

INDEX

PAGE

A.

ABANDONMENT, Notice of . . 205
AB EXTRA, ... 11
ABSOLUTE BILLS OF SALE 172–6
ACCEPTANCE, OF BILL OF EXCHANGE—
Accommodation 105
By Agent 81
Conditional 105
Definition 104
General 105
Honour, for 106
In case of need 107
Local 105
Partial 105
Presentation for 106
Procuration signature 104
Qualified 105
Representative capacity, in . . 104
Suprà protest 106
ACCEPTANCE, OF CONTRACT—
Cannot be revoked 30
Communication of 26–7
Conditions of offeror notified to offeree 26
Conduct, by 26, 28
Definite person, by a 26
Essential 25
Firm offer, of 30
General offer, of 26
Offer may be revoked at any time before 27
Offeror's terms and conditions must be observed 26
Post, use of 28–9
Revocation, must be communicated 27
Tacit 28
Unconditional 27
Within time stipulated or reasonable time 28
Word, by 26, 28
ACCEPTANCE, SALE OF GOODS—
Definition 132
Memorandum 133
Under Sale of Goods Act . . . 132
ACCEPTOR OF BILL OF EXCHANGE—
Accommodation 105
Liabilities of 104–5
See also Acceptance.
ACCIDENT INSURANCE—
Insurable interest 194
Personal contract 206
Stamp duties 207
Subrogation does not apply . . . 206
Uberrimæ fidei 195
See also Insurance and Policy.
ACCOMMODATION BILL . . . 110

PAGE

ACCORD AND SATISFACTION—
Definition of 59
Discharge of contract by . . . 59
Payment "on account" . . . 23
ACCOUNTANTS—
Entering into contracts 39
ACCOUNT DAYS 237
ACCOUNT PAYEE 120–1
ACCOUNTS—
Bankrupt's 302
Company's 281–2
Liquidator's 286
Paid agent, of 76–7
Trustee's (bankruptcy) 309
ACKNOWLEDGMENT under Statute of Limitations 15, 68
ACTIO PERSONALIS MORITUR CUM PERSONA 4
ACTIONS—
County Court 7
Damages, for 4, 143–4
Ex contractu 4
Ex delicto 4
High Court 5, 6
Price, for 143
Tort, for 4
ACTS OF BANKRUPTCY . . 293–4
ACTUAL IMPOSSIBILITY . . . 46
ACTUAL TOTAL LOSS . . . 204
AD LITEM 35
ADEQUACY OF CONSIDERATION—
Bills of exchange 22, 109
Court, attitude of 22
Must be real 22
ADJUDICATION OF BANKRUPTCY 304
ADMINISTRATION—
Estate of person dying insolvent 323–4
Partnership estate . . . 164, 324
ADOPTION OF CONTRACT . . 260
ADVANCE FREIGHT 223
ADVERTISEMENTS—
Companies winding-up 288
Meetings of creditors 300
Receiving orders 298
AFFREIGHTMENT—
Bill of lading . . . . . 220 *et seq.*
Charter party. *See separate heading.*
Definition 216–7
Delivery orders 223
Dock warrants 223
Freight 223
Liability of master or owner 217, 221
Limitation of liability 217
See also Bill of Lading, Carriage by Sea, Charter Party and Freight.

PAGE

AGENCY. *See also Agent*—
Bankruptcy terminates 84
Capacity to appoint agents . . . 72
Creation of 73–5
Death terminates 84
Definition of 72
Delegation of 78
Delegatus non potest delegare . . 78
Duties of agent and principal . . 76
Estoppel, by 75
General 72
Insanity terminates 84
Irrevocable 78
Kinds of Agents—
Auctioneers 86–7
Bankers 88–9
Barristers 91
Brokers 85–6
Commission agents . . . 73, 86
Counsel 73, 91
Directors 276
Factors 73, 85
Insurance brokers . . . 73, 86, 201
Managing owners 91
Of necessity 75
Partners 73, 89, 153
Patent agents 73, 91, 242
Servants 73, 89
Shipbrokers 73, 86
Ship's master 75, 91
Stockbrokers 73, 86, 236
Wife 74, 89, 90
Law of . . . . . 72 *et seq.*
Not to be performed within a year 74
Preliminary contracts of company 260
Ratification of 75, 83
Revocation of 83
Special classes of 74
Termination of 83–5
Third parties, relation to . . . 80
AGENT. *See also Agency*—
Acceptance of bill 81
Appointment of 73–4
Auctioneers 86–7
Authority of . . . . . 74 *et seq.*
Bankers 88–9
Barristers 91
Betting on behalf of principal . . 80
Breach of warranty of authority . 83
Bribery of 77
Brokers 85–6
Capacity to act as 72
Classes of 72–3, 85
Commission 73, 86
Contract under seal 74
Corporation, for a 74
Counsel 91, 98
Customs of 80, 82
Definition of 72
Del credere. See separate heading.
Delegation of duties 78
Directors 276
Duties of 76
Estoppel, by 75
Factors 73
Fraudulent acts of . . 75, 79, 82–3
General 72
Grant leases, to 74
Gratuitous 76
Illegal contracts by 80
Implied 74–5

PAGE

AGENT (*continued*)—
Indemnification by principal . . 79
Insurance 73, 86, 199, 201
Kinds of. *See Agency.*
Known principal, for a 81
Liability of . . . . . 76 *et seq.*
Liability to third parties . . . 80–3
Lien of 79–80
Managing owners 91
Misfeasance of 77
Misrepresentation by 79
Of necessity 75
Negligence of 76–7
Paid 76–7
Partners 73, 89, 153
Patent 73, 91, 242
Personal liability of 81–2
Prospectus, etc., signing . . . 74
Ratification by principal . . 75, 83
Remuneration of 79
Rights and liabilities of third parties 80–3
Rights of, against principal . . 79–80
Rights of principal against . . 76–9
Secret profits and bribes . . . 77
Servants 73, 89
Set-off against 82
Shipbrokers 73, 86
Ships' masters 75, 91
Special 73
Stockbrokers 73, 86, 236
Third parties, and 80
Unauthorised 75, 82, 83
Undisclosed principal, for an . . 81
Universal 73
Wife, as 74, 89, 90
AGENT AND THIRD PARTY—
Breach of warranty of authority . 83
Contract for foreign principal . . 81
Contract in own name 81
Liability of agent 81, 83
Non-existent principal 82
Rights of agent 81
Signing bill of exchange . . . 81
Uncertain existence of principal . 82
AGREEMENT—
Binding 8, 9
v. Contract 12
v. Covenant 12
Discharge of contract by . . . 59
Discharge of surety by 230
Enforceable 10
Gift, for 130
Hire purchase 144, 173
Marriage, in consideration of . . 20
Not to be performed within a year 20–1
v. Promise 12
Sale of goods, for . . . 16, 19, 21, 125
Seamen, with 187, 191
Stamp duties on 21
Unenforceable 14
Void 14
Voidable 14
See also Contracts.
AGREEMENT TO SELL—
Avoidance of 130
Definition of 124–5
Implied conditions 135
Specific goods 129
ALIENS—
Bankruptcy of 202

PAGE
ALIENS (*continued*)—
Capacity to contract 36–7
Enemy 37
Partners 150
ALLONGE 108
ALLOTMENT OF SHARES. *See Shares.*
ALTERATION—
Of bill 110
Of capital of company . . . 272–3
Of law, impossibility of performance through 69
Of terms of guarantee 231
AMBASSADORS, FOREIGN—
High Court jurisdiction over . . 7
AMBIGUITY—
Latent 54–5
Patent 54
"AND REDUCED" 271
ANNUAL MEETING 279
ANNUAL RETURN OF MEMBERS 266
ANNUAL SUMMARY OF COMPANY 266, 283
APPLICATION AND ALLOTMENT 264
APPOINTMENT—
Agent 73–4
Arbitrator 330–1
Auditors 281
Committee of inspection . 286, 308
Directors 277
Liquidator 286, 288
Receiver for mortgagee 170
Receiver in partnership . . 159, 160
Trustee in bankruptcy 304
APPRENTICESHIP—
Preferential claim in bankruptcy 320
APPROPRIATION OF PAYMENTS 62–3
ARBITRATION—
Arbitrator. *See separate heading.*
Award. *See separate heading.*
Clause 326–7
Courts of 327
Definition 326
Institution of 328
Method of settling disputes . . . 7
Reference back 333
Statutes relating to 327
Submission. *See separate heading.*
Umpire 330–2
ARBITRATOR—
Appointment of 330–1
Award of 332–3
Lien of 333
Powers and duties 331–2
Remuneration of 333
Stating special case 332–3
Third 331
ARRANGEMENTS WITH CREDITORS 289
ARRANGEMENT—
Deeds of 304, 325
Scheme of 303–4
ARREST OF DEBTOR 298
ARTICLES OF ASSOCIATION. 258–9
ARTICLES OF PARTNERSHIP 147, 152, 158
ASSIGNABILITY 57, 93
v. Negotiability 58, 93

PAGE
ASSIGNEE'S INTEREST 195
ASSIGNMENT—
Book debts 167
Common law 57
Contracts 57
Copyright 252
Debtor's property 294
Equitable 57, 93
Insurance policy—
Fire 199
Life 197
Marine 206
Interest in partnership 159
Involuntary 58
Judicature Act 57
Mortgage, by 167
Obligations, of 58
Patents 243
Rights, of 57
"Subject to the equities" . . . 57
Trade marks 246
ASSOCIATION—
Articles of 258–9
Clause 258
Memorandum of 256–8
ASSURANCE—
Accident 193, 206
Assignment . . . 195, 197, 199, 206
Classes of 193, 207
Contract of 193
Definition 193
Insurable interest 194–5
Life. *See separate heading.*
Policy 193, 195, 197
Premium 193
Stamp duties 207
Subrogation 194, 205
Uberrimæ fidei 195
Winding-up of partnership, for . 163
See also Accident, Fire, Life and Marine Insurance.
ATTESTATION CLAUSE . . . 258
ATTORNEY, POWER OF . . . 74
AUCTIONEER—
Agency of 73, 86
Cash, must sell for 88
Definition of 86
Duties of 87
Liability for conversion 87
Licence duty 87
Lien of 87
AUCTION, SALES BY 145
AUDITORS OF COMPANY—
Appointment 281
Duties 282
Rights 281–2
AVAL 114
AVERAGE—
Clause (Fire) 198–9
F.G.A. 205
F.P.A. 205
General 188, 222
Particular 188–9
Primage and 221
AWARDS—
Reference back 333
Requisites of 333
Stamp on 332
Taking up 333

PAGE

B.

BACKWARDATION 236
BAILEE—
Carriers as 214–5
Involuntary 214
Voluntary 77, 215
BAILMENTS 77, 178
BANKERS—
Agency of 73, 88–9
Authority of 119–121
Customer, relations with . . 88, 117
Duties of 88
Lien of 88, 182
Rights and liabilities . . . 88–9
Statutory protection 119
Termination of authority . . . 120
BANK NOTES—
Definition 121
Issue of 122
Legal tender, as 122
BANKRUPT. *See also Bankruptcy.*
Accounts of 302
Adjudication 304
Aliens 292
Arrest of debtor 298
Capacity to contract 39
Companies 292
Convicts 292
Deceased persons 292
Disabilities 322–3
Discharge 321–3
Distribution of property . . . 319
Estate of 323–4
Infant 291
Interest on debts . . . 318, 320
Joint-stock companies 292
Keeping house 295
Lunatics 292
Married women 35, 292
Partnerships 292
Property of. *See separate heading.*
Public examination 302–3
Statement of affairs 302
Undischarged 322
Voluntary settlements 314
Who may be made 291
BANKRUPTCY. *See also Bankrupt.*
Acts as estoppel 69
Acts of 293, 294
Adjudication in 304
Agency, in 84
Arrest of debtor 298
Bills of exchange 325
Board of Trade 299
Commencement of 300
Committee of inspection . . 308–9
Composition, Scheme of 303
Creditors' meetings 300–2
Debtor's statement 302
Deceased persons 323
Deeds of arrangement 325
Deferred creditors 320
Determination of agency, by . . 84
Discharge of contract by . . 58, 71
Disclaimable property . . . 315–6
Dividends in 320
Enquiry as to property 312
Execution creditors 313
Ex parte Waring, Rule in . . . 325

PAGE

BANKRUPTCY (*continued*)—
Fraudulent preference . . . 313–4
Interest payable 318, 320
Keeping house 295
Non-provable debts 319
Notice 295
Official receiver in 299
Partners, of 164, 292, 324
Persons liable to 291–2
Petition 295–6
Preferential claims 320
Procedure 293
Proof of debts 317
Protected transactions . . . 311–2
Provable non-provable debts . . 319
Proxies 301
Public examination 302–3
Realisation of property . . . 309–10
Receiving order 295, 297
Recoverable property . . . 312–5
Relation back 299, 300
Reputed ownership 310
Rules 291
Scheme of arrangement . . . 303–4
Secured creditors 317
Small 323
Surety, of 231
Termination of agency 84
Trustee. *See separate heading.*
Vesting order 316
Voluntary settlements . . . 313–4
See also Bankrupt, Bankrupt's Property, Creditors, Meetings of Creditors, Winding-up of Companies.
BANKRUPTCY NOTICE . . . 294–5
BANKRUPT'S PROPERTY—
Assignment of book debts . . . 314
Disclaimable 315–6
Divisible 309
Execution creditors and . . . 313
Not divisible 309
Recoverable property . . . 312–3
Reputed ownership 310
Trustee's powers and rights . . 310
Voluntary settlements 313
BARRATRY 191, 220
BARRISTERS—
Agency of 91
Contracts with 39
BEARS (on Stock Exchange) 235–6, 238
BILL OF EXCHANGE—
Acceptance. *See separate heading.*
Accommodation 110
Alteration 110
Ante-dated 99
Aval 114
Bearer 98–9
Capacity of parties 103
Circuity of action 109
Company bills 103
Conflict of laws 103
Consideration for 22, 109
D/A 115
Dated on Sunday 100
Days of grace 101–2, 116
Definition of 97
Delivery of 107
Discharge of 114–5
Dishonour. *See separate heading.*
Documentary 115–6
D/P 115

PAGE

BILL OF EXCHANGE (*continued*)—
Drawee, fictitious 98
Drawee's liabilities 98
Drawer's liabilities 114
Essentials of 97
Fictitious payee 99
Foreign. *See separate heading.*
Forgery on 104
Form of 98, 334
Holder for value 92, 107
Holder in due course 107
Inchoate 110
Illegal 110
In a set 102
Indorsement. *See separate heading.*
Indorser, liability of 107, 114
Infants signing 103
Inland 100
Interest on 113
Liability of parties . . 98, 107, 114
Lost 115
Maturity 100
Negotiable instruments 97
Negotiation 107–9
Notice of dishonour 112
Noting and protesting . . . 112–3
Overdue 109, 117
Parties 97–8
Payable on demand 101
Payable to bearer 98–9
Post-dated 100
Presentment 106, 111
Referee in case of need 107
Signature of, in representative capacity 81, 104
Specimens of 334
Stamping 122–3
Time of payment 100
To buyer of goods 129
Transferability 94–6
True owner 95
Undated 99
Usance of 102
See also Acceptance of Bill, Discharge of Bill, Dishonoured Bill, Foreign Bill, and Endorsement.
BILL OF HEALTH 187
BILL OF LADING—
Assignability of 222
Clean 221
Consignee's rights 223
Definition 220
Drawn in a set 222
Duties of master and shipowner 222
Form of 221
Freight 223
Indorsee's rights 223
Liability of master or owner . . 221
Lien of shipowner 222
Mate's receipt 220
Not negotiable 222
Primage and average 221
Shipowner's power of sale . . . 222
Stamp duty 221
Stoppage *in transitu* 223
To buyer of goods 129
Transfer of 222–3
Transferee's rights 222
BILLS OF SALE—
Absolute . . . . . 172 *et seq.*, 176

PAGE

BILLS OF SALE (*continued*)—
Conditional . . . . 172, 174 *et seq.*
Consideration 175
Documents which are not . . . 173
Enactments . . . . . 173 *et seq.*
Fees payable 174
Form of 175
Grantee of 177
Non-compliance with statute . . 176
Registration of 174–5
Remedies of grantee 177
Stamp duties on 175
Transfer of ship, for 186
What constitutes 173
BOARD OF TRADE—
And Limited Companies . . 256, 284
Duties of, in bankruptcy . . . 299
„ „ in winding-up of companies 286
BONDS—
Bottomry 189, 190
Recognizance 11, 183
Respondentia 189, 190
Securities 183, 238
Single 183
BONUS SHARES 273
BOOK DEBTS—
Assignment of 167
BOTTOMRY 189, 190
BOUGHT NOTE 86, 236
BREACH—
Condition, of 134, 137
Contract, of 64
Discharge of surety by 230
Partial 65
Remedies on 64
Warranty, of 137
Warranty of authority, of . . 79, 83
BREACH OF CONTRACT—
Damages for 64
Injunction for 67
May act as discharge 64
Quantum meruit 65–6
Remedies for 64–5, 67
Specific performance 65, 67
Total 64
BREAD, SALE OF 45
BRIBES. *See Secret Profits.*
BRITISH SHIPS. *See Ships and Shipping.*
BROKERAGE ON SHARES . 263, 266
BROKERS—
As agents 85–6
Books, signed entry in 86
Bought note 86
Definition 85
Differ, from factors 85
Insurance 86
Liability of 86
Sold note 86, 236
Stockbrokers. *See separate heading.*
BULLS (on Stock Exchange) . 235–6, 238
BUSINESS NAMES . 45, 148, 149, 267
BUYER OF GOODS—
Bills of lading and exchange forwarded to 129
Remedies of 144
Rights of . . . . . 133 *et seq.*

PAGE

C.

CALL (on Stock Exchange) . . . 239
CALLS ON SHARES . . .269, 270
CANAL COMPANIES . . . 210–1
CAPACITY TO CONTRACT—
Accountants 39
Agents 72
Aliens 36–7
Bankrupts 39
Barristers 39
Bill of exchange, by 103
Convicts 39
Corporations and companies . . 37
Dentists 39
Drunken persons 36
False statement of infant with regard to age 31
Foreign sovereigns and states and their representatives 37
General rules 9, 30
Infant as partner 151
Infants . . . . . 30 *et seq.*
Infant's Relief Act 33
Married women 35
Necessaries of infant 33
Persons of unsound mind . . . 36
Physicians 39
Ratification of contracts of infants 32
Separate estate, married women may bind 35
Solicitors 39
Surgeons 39
Veterinary surgeons 39
CAPITAL OF COMPANY—
Alteration of 272–3
Authorised 270
Debenture 271
Dividends on 273
Formation, at 257
Issued 270
Nominal 270
Paid-up 271
Reduction of 271
Reserve 271
Shares 271–2
Stock 272
Subscribed 270
Terms used about 270–1
Uncalled 271
CARRIAGE—
Act of God 218, 221
Common carriers . . . 208 *et seq.*, 214
Law relating to . . . . . 208 *et seq.*
Passengers, of. *See separate heading.*
Passengers' luggage, of 215
See also Carriage by Sea, Carriage of Passengers, and Common Carriers.
CARRIAGE BY SEA—
Bill of lading . . . . . 220 *et seq.*
Charter party . . . . . 217 *et seq.*
Declaration of nature of goods . . 212
Fire, shipowner not liable for . . 217
Freight 223
Liability of carrier 212
Liability of owner 212, 221
Limitation of liability 212
See also Bill of Lading, Charter Party, and Common Carriers.

PAGE

CARRIAGE OF PASSENGERS—
Duties of railway company . . . 213
Liability of company for negligence 208, 213
Limitation of liability 212
Passengers' luggage 215
Passengers' tickets 214
Punctuality of trains 213
Time tables, effect of 213
CARRIERS. *See Common Carriers.*
CARRY OVER 236
CASE OF NEED 107
CAUTIONARY OBLIGATION . . 152
CAVEAT EMPTOR 133, 195
CERTIFICATE OF INCORPORATION 259
CERTIFICATE OF REGISTRY 185, 187
CERTIFICATE OF SHARES . 267–8
"CESSER CLAUSE" 218
CESTUI QUE TRUST . . . 52, 63
CHAMPERTY 24, 40, 41
CHANCERY 2, 5
CHARGING ORDER 6
CHARTER PARTY—
Cesser clause 218
Conditions and warranties . . . 219
Definition 217
Demurrage 218
Deviation 219
Form of 217
Freight 223
Implied warranty 219
Lay days 218
Lien of shipowner 218
Part of ship's papers 187
Running days 218
Seaworthiness of vessel 219
Stamp duty 217
Terms of 217–8
Warranties 219
See also Bills of Lading and Freight.
CHARTERER 217
CHATTELS 124
CHEQUES—
Account payee 120–1
Bankers and . . . . . 118 *et seq.*
Banker's protection 119
Crossed . . . . . 95, 119 *et seq.*
Definition 117
Fictitious payee 99
Forgeries of 119
Form of 334
Not negotiable 119
Overdue 109, 117
Post-dating 121
Presentment 117
Stamping 123
Termination of authority to pay 120–1
CHOSES IN ACTION—
Assignment of 57, 93
Definition 8
Enforcement of rights 58
Misrepresentation of 49
Securities 236, 238
CHOSES IN POSSESSION—
Assignment 57
Definition 7
C.I.F. CONTRACTS 224
CIRCUITY OF ACTION 109
CIVIL WRONG 40
CLAYTON'S CASE 62

PAGE
CLEAN BILL OF LADING . . 221
CLOG ON REDEMPTION . . . 169
COAL, SALE OF 45
CODIFICATION 2
COMMENCEMENT OF BUSINESS 259, 260, 283
COMMISSION AGENTS . . . 73, 86
COMMITTEE OF INSPECTION—
Bankruptcy, in 308–9
Winding-up of companies, in . . 286
COMMON CARRIERS—
Bailee, as 214
Barge owner as 208
Charges of 209
Company's risk 210
Consignor may change address . 214
Dangerous goods 215
Delivery of goods 214
Duties of 214–5
Equality clauses 216
Exemption from liability . . 211–2
Insurer, as 209
Limitation of liability . . 209, 212–3
Negligence of owner 209
Owner's risk 210
Railway and canal companies 208, 210
Refusal of goods 214
Regulation of rates and charges . 211
Special contract by 209
Termination of liability 216
Warehouseman, liability as . . . 215
See also Carriage, Carriage by Sea, and Carriage of Passengers.
COMMON LAW . . . . . 1 *et seq.*
Choses in action not assignable at 57
Contracts illegal at 40
Origin of 1
COMMON SEAL 259
COMMUNICATION—
Of acceptance 26
Of offer 26
Of revocation 27
COMPANIES—
Accounts of 281–2
Bankruptcy of 292
Capacity to contract 37
Contracts of, how made . . . 28, 38
Dissolution 255, 284, 289
Dividends 273
Foreign interests 289
Fraud 49, 50
Guarantee 283–4
Incorporation by letters patent . 255
Limited liability . . . . . 255 *et seq.*
Meetings of. *See separate heading.*
Mode of signing bills . . . 103–4
Preliminary contracts 260
Private 282–3
Railway and canal. *See Railway and Canal Companies.*
Resolutions. *See separate heading.*
Unlimited 255
Winding-up. *See separate headings.*
See also Guarantee Companies, Private Companies, Limited Liability Companies, Directors, Members of Company, and Shares.
COMPANY'S RISK 210
COMPOSITION WITH CREDITORS 303

PAGE
CONCURRENT CONDITIONS—
In contract 65
CONDITION—
Breach of 134, 137
Charter party 219
Concurrent 65
Definition 133–4
Implied 135
Precedent 65–6
Sale of goods . . . . . 134 *et seq.*
Treatment of, as warranty . . 134
CONDITIONAL ACCEPTANCE—
Of bill of exchange 105
CONDITIONAL BILL OF SALE 172, 174 *et seq.*
Indorsement 108
CONDUCT—
Acceptance by 26, 28
Offer by 28
CONFLICT OF LAWS . . . 103
CONNIVANCE 232
CONSENSUS AD IDEM . . 10, 15
CONSIDERATION—
Adequacy of 22, 109
Arrangement with creditors . . 23
Bill of exchange, for . . . 24, 109
Definition 21
Enforcement, must be capable of . 23
Essentials of 22
Executed and executory . . . 25
Existing obligation 24
Forbearance to sue 22
Good 21
Immoral, must not be 24
Legal, must be 10
Legality of 23–4
Necessity for 10
Past 24, 109
Payment of smaller sum in satisfaction of a larger 23
Promissee, must move from . . 23
Public policy, must not be contrary to 24
Restraint of trade, must not be in 24
Suretyship, in 226
Vague or indefinite, must not be . 23
Valuable 21
CONSIGNEE'S RIGHTS . . . 223
CONSTRUCTION OF CONTRACTS 54–5
CONSTRUCTIVE TOTAL LOSS . 204
CONTANGO 236–7
CONTINUATION 236
CONTINUING GUARANTEE . 228–9
See also Guarantees, Surety, and Suretyship.
CONTRACT NOTE 236
CONTRACTS—
Acceptance. *See separate heading.*
Accord and satisfaction 59
Adoption of 39
Agreement 58
Appropriation of payments . . . 62
Assignment of 57, 93
Assurance . . . . . 193 *et seq.*
Bankruptcy, discharge by . . . 71
Breach of. *See separate heading.*
Capacity to make. *See separate heading.*
C.I.F. 224
Classification 11
Common law 40

PAGE
CONTRACTS (*continued*)—
Communication of acceptance . .26–7
Conditions in 65
Consensus ad idem 10
Consideration. *See separate heading.*
Construction of 54
Definition of 10
Discharge of. *See separate heading.*
Distinguished from agreement . . 10
Duress in 52
Essentials of 13
Estoppel by deed 12
Estoppel *in pais* 13
Executed 13
Executory 13, 65
Exemption from liability . . 211–2
Existence of subject matter . . 47
Express and implied 13
F.A.S., F.O.R., F.O.B. 224
Foreign contracts 55–6
Foreign law and 55–6
Form of 15
For sale of goods. *See separate heading.*
Fraud. *See separate heading.*
Gaming and wagering. *See separate heading.*
Illegal 23, 39, 40
Implied 13
Impossibility and . . . 45, 59, 69
Indemnity 193–4, 198–9
In restraint of trade 41–3
Invalid . . . . . 39 *et seq.*
Law governing 55
Leeman's Act 44, 80, 234
Legality and possibility . . . 39, 45
Limited companies 50, 260
Memorandum in writing . 17 *et seq.*
Merger and estoppel, discharge by . 68
Method of forming 9
Misrepresentation 48
Mistake 46
Novation 58, 155
Obligations under 52–4
Offer and acceptance . . 25 *et seq.*
Opposed to public policy . . . 41
Parol 12
Part performance of 19
Payment in discharge of . . . 60
Performance . . . . . 60 *et seq.*
Privity of 53
Quantum meruit 65–6
Quasi 13
Record, of 11
Rescission of 19, 49, 71
Remedies for breach. *See separate heading.*
Rights and obligations under . .52–4
Sale, of 124
Simple 11–2, 15
Special, by common carriers . . 209
Specialty. *See separate heading.*
Specific performance 67
Statutory provisions 43–5
Suretyship 16, 225
Total breach 64
Trade disputes 53–4
Uberrimæ fidei 52, 195
Under seal 15, 38
Undue influence 52

PAGE
CONTRACTS (*continued*)—
Unenforceable 14, 16
Validity presumed 40
Void . . . . . 14, 31, 43 *et seq.*
Voidable 32
Which must be in writing . . .15–6
Wagering 43
With accountants 39
„ agents . . . . . 72 *et seq.*
„ aliens 36–7, 71
„ barristers 39
„ convicts 39
„ companies 38
„ corporations 37
„ dentists 39
„ drunken persons 36
„ infants . . . . . 30 *et seq.*
„ married women 35–6
„ persons of unsound mind . 36
„ physicians 39
„ surgeons 39
See also Acceptance; Capacity to Contract; Conditions; Consideration; Mistake; Misrepresentation; and Warranties.
CONTRIBUTION CLAUSE (Fire Insurance) 198
CONTRIBUTORIES 286
CONVERSION 87, 180
CONVEYANCE of land, etc. . . . 15
CONVICTS—
Bankruptcy of 292
Capacity to contract 39
CO-OWNERSHIP 150
Of ship 187
COPYRIGHT—
Assignment of 252
Designs in 253–4
Duration of 252
Infringement . . . . . 249 *et seq.*
International 253
Law of . . . . . 248 *et seq.*
Libraries, copies to 249
Ownership of 252–3
Publication 249
Remedies for infringement . . . 251
Rights in 249
What constitutes 248
CORPORATIONS—
Agent for 74
Aggregate 37
Capacity to contract 37
Contracts under seal 38
Creation of 37
Sole 37
CO-SURETIES—
Rights of surety against . . . 230
COUNSEL—
Agency of 73, 91
Contracts with 39
COUNTER CLAIM 57, 60
COUPONS ON DEBENTURE BONDS 274
COUPONS ON SHARE WARRANTS 269
COUNTY COURT ACTIONS . . 7
COURTS—
And actions . . . . . .2 *et seq.*
Of arbitration 327
Record of 3
Stannaries 146

PAGE

COVENANT 12
CREDITORS—
Arrangement with 289
Deferred 320–1
Execution creditors 313
Meetings of. *See separate heading.*
Preferential 319, 320
Rights of surety against . . . 229
Secured 296, 317
Voting by 300–1
CROSSED CHEQUE . . 95, 119 *et seq.*
CUMULATIVE SHARES . . . 272
CUSTOM—
Agents 80, 82
Applied to contract of sale . . . 128
Marine Insurance 201
Market overt 139
Merchants 1
Stockbrokers 44, 80, 234

D.

D/A BILLS. 115
DAMAGES—
Actions for 4, 143–4
Breach of contract, on 64
Breach of warranty, on 133
Dishonoured bill of exchange, on 113
Distinguished from penalty . . . 66
Fraudulent misrepresentations, for. 51
Liquidated 5, 66
Measure of 113–4
Special 67
Unliquidated 67
DAMNUM SINE INJURIA . . 4
DATE OF BILL OF EXCHANGE 100–1
DAYS OF GRACE . . . 101–2, 116
DEAD FREIGHT 223
DEARLE V. HALL, Rule in . . 57
DEBENTURE BONDS—
Coupons on 274
Irredeemable 274
Negotiability of 96
DEBENTURES—
Definition 274
Floating charge 274–5, 287
Kinds 274
Mortgage 171
Registration of 275
Remedies of debenture holder . . 275
DEBT, DEFAULT OR MISCARRIAGE OF ANOTHER—
Statute of Frauds, Sec. 4 . . . 16
DEBTOR—
Adjudication in bankruptcy . . 304
Arrest of 298
Composition by 303
Petition in bankruptcy . . . 296–7
Public examination 302–3
Rights of surety against . . . 229
Statement of affairs 302
DEBTS—
Assignment of 167
Interest on 145, 318, 320
Not provable 318–9
Order of payment of 319
Payable in full 324
Payable *pari passu* 320
Postponement of payment . . . 318

PAGE

DEBTS (*continued*)—
Proof of 317–8, 324
Provable non-provable 319
Set off 318
DECEASED PERSONS—
Bankruptcy of 292
Partners 155, 159
DEED POLL 11
DEEDS—
Agent appointed by 74
Arrangement of 325
Delivery of 11
Sealing of 11
DEFAULT OF MORTGAGOR . . 169
DEFERRED SHARES 272
DEFINITIONS—
Accident insurance 206
Accord and satisfaction 59
Advance freight 223
Affreightment 216–7
Agency 72
Agent 72
Agreement to sell 124–5
Allonge 108
Arbitration 326
Assurance 193
Auctioneers 86
Bank notes 121
Barratry 191, 220
Bill of exchange 95
Bill of health 187
Bill of lading 220
Broker. 85
Cesser clause 218
Champerty 40
Charging order 6
Charter party. 217
Chattels 124
Cheque 118
Chose in action 8
Chose in possession 7
C.I.F. 224
Clog on redemption 169
Commission agents 86
Common carriers 208
Condition 133–4
Consideration 21
Contract 10
Contributories 286
Conversion 87
Copyright 248
Dead freight 223
Debentures 274
Deed poll 11
Defeasance 174
Del credere agent 73
Delivery order 223
Detinue 180
Deviation 219
Dock warrant 223
Documentary bill 115
Double insurance 206
Duress 52
Equitable execution 6
Equitable lien 183
Equitable mortgage 171
Equities, free of the 92
Equities, subject to 93
Equity of redemption 169
Escrow 11
Estoppel 69

PAGE

DEFINITIONS (*continued*)—
Executed contracts 13
Executory contracts 13
Extraordinary resolution . . . 281
Factor 85
F.A.S. 224
Feasance 77
F.G.A. 205
Fire insurance 198
Flotsam 191
F.O.B. 224
F.O.R. 224
Foreign bill 100, 102
F.P.A. 502
Garnishee order 6
General agent 72
General average 188
General lien 79, 182
Goods 124
Goodwill 162
Guarantee 225
Holder in due course 107
Indenture 11
Inland bill 100
Insurable interest 194
Insurance brokers 86
Jetsam 191
Jettison 188
Lagan. *See Ligan*
Lay days 218
Legal mortgage 169
Legal tender 60
Lien 180
Life insurance 195
Ligan 191
Limited liability company . . . 255
Limited partnership 165
Liquidated damages 66
Maintenance 40
Manifest 187
Marine insurance 199
Maritime lien 182
Market overt 138
Misfeasance 77
Misrepresentation . . . 48 *et seq.*
Mixed policies 201
Mortgage 168
Negotiable instruments 92
Non-feasance 77
Obligor 183
Particular lien 79, 182
Partnership 146
Patent 241
Pawn 177
Penalty 66
Pledge 177
Possessory lien 181
Premium 193
Primage and average 221
Private company 282
Privity of contract 53
Promissory note 115
Promoter 260
Re-exchange 113
Re-insurance 206
Salvage 190
Ship's husband 187
Special agent 73
Stockbroker 234
Subrogation 194
Suretyship 225

PAGE

DEFINITIONS (*continued*)—
Tacking of Securities 171
Time policy 201
Trade mark 245
Underwriter 193
Universal agent 73
Unliquidated damages 67
Unvalued policy 201
Usance 102
Valued policy 201
Voyage policy 201
Warranty 133
Writ of *eligit* 6
Writ of *fieri facias* 6
DEFINITIONS OF LEGAL MAXIMS AND PHRASES—
Ab extra 11
Actio personalis moritur cum persona 4
Ad litem 35
Caveat emptor 133
Cestui que trust 52
Consensus ad idem 10
Damnum sine injuria 4
Delegatus non potest delegare . . 78
Ejusdem generis 204
Ex contractu 83
Ex delicto 83
Ex nudo pacto non oritur actio . . 21
Ignorantia juris neminem excusat . 47
Injuria sine damno 3
In pais 13
Lex loci contractus 56
Lex loci fori 56
Lex mercatoria 1
Locus penitentiæ 27
Nemo dat quod non habet . . 93, 137
Non compos mentis 68
Nudum pactum 23
Objet de vertu 67, 144
Omnis ratihabitio retrotrahitur et mandato priori æquiparatur . . 75
Pari passu 287, 320
Quantum meruit 65
Qui facit per alium facit per se . . 54, 72
Quod ab initio non valet in tractu temporis non convalescit . . . 45
Res perit domino 127
Sans recours 109
Uberrimæ fidei 52
Ultra vires 37
Ut res magis valeat quam pereat . . 55
DEFEASANCE 174
DEFERRED SHARES 272
DEL CREDERE AGENT—
Contract not in writing 226
Definition 73
Personal liability of 73
Third parties as against principal, and 81
DELEGATION—
Agency, of 78
DELEGATUS NON POTEST DELEGARE 78
DELIVERY—
Bill of exchange, of 107
Deed, of 11
Goods, of 125–7
Larger or smaller quantity . . . 126
Orders 223
Right of buyer, to 133
DEMAND BILLS 101

PAGE

DEMURRAGE 218
DENTISTS 39
DESCRIPTION—
Buying by 136
Sale by 128, 135–6
DESIGNS—
Copyright in 253–4
DETINUE 180
DEVIATION 219
DIFFERENCES (Stock Exchange) . 235
DIRECTORS—
Agency of 276
Agent of, signing prospectus . . 74
Appointment of 277
As trustees 276
Consent to act 259
Fraud of 49, 263
Liability of 49, 277–8
Management of company . . . 276
Misrepresentations by 263
Particulars as to Directors' Act . 266
Paying for shares 260
Remedy against 263
Share qualification 277
DISCHARGE OF BANKRUPT—
Disabilities prior to 322
Effect of 323
How obtained 321
Powers of court 321–2
DISCHARGE OF BILL OF EXCHANGE—
Cancellation 114
Lapse of time 114
Negotiation to acceptor 115
Payment 114
Waiver 114
DISCHARGE OF CONTRACTS—
Accord and satisfaction 59
Agreement 59
Bankruptcy 69, 71
Breach 64
Estoppel 68
Impossibility 69
Lapse of time 67
Law relating to . . . . . 58 *et seq.*
Merger 68
Methods of 59
Payment 60
Performance 60
See also Breach of Contract and Damages.
DISCHARGE OF SURETY . . 230–3
DISCLAIMABLE PROPERTY—
Effect of disclaimer 316
Leases 315
Provisions of Bankruptcy Act . . 315
Restrictions on trustee 316
Vesting orders 316
DISCLAIMER 315–6
DISHONOUR OF BILL OF EXCHANGE—
Foreign Bill 103
Measure of damages 113
Non-acceptance 105, 107
Non-payment 107, 111–2
Notice of 112
Noting and protesting . . . 112–3
DISPUTES IN PARTNERSHIP . 157
DISSOLUTION—
Company 255, 284, 289
Partnership 151

PAGE

DISTRESS, LANDLORD'S POWER OF 320
DISTRIBUTION OF ASSETS—
Bankruptcy 319–20
Partnership 160
Winding-up of company . . . 286
DIVIDENDS—
Bankruptcy 320
On shares 273
DOCK WARRANTS 223
DOCUMENTARY BILLS . . 115–6
DOCUMENTS—
Against acceptance 115
Against payment 115
DORMANT PARTNER . . 148, 154
DOUBLE INSURANCE 206
D/P BILLS. 115
DRAWEE OF BILL—
Fictitious person 98
Liabilities of 98
DRAWER OF BILL—
Liabilities of 114
DRUNKEN PERSONS—
Capacity to contract 36
DURESS 52
DUTIES—
Agent to principal . . . 76 *et seq.*
Auctioneer 87
Banker 88
Owner or master of ship . . . 190

E.

EARNEST 131, 133
EJUSDEM GENERIS 204
EMBLEMENTS 124
ENDOWMENT POLICY . . . 196
ENFORCING JUDGMENT . . . 6
ENQUIRY AS TO PROPERTY . 312
"EQUALITY CLAUSES" . . . 216
EQUITABLE ASSIGNMENT . 57, 93
EQUITABLE EXECUTION . . 6
EQUITABLE LIEN— . .
Definition of 183
Partners, of 160
EQUITABLE MORTGAGE . . . 171
EQUITIES—
Free of 92
Subject to 93
EQUITY . . . . . 1 *et seq.*, 93
Redemption, of 169
ESCROW 11
ESSENTIALS OF A VALID CONTRACT—
Capacity to contract . . 30 *et seq.*
Consideration . . . . 21 *et seq.*
Form . . . . . 15 *et seq.*
Fraud, absence of . . . 49 *et seq.*
Legality and possibility . . 39 *et seq.*
Misrepresentation, absence of . 48–9
Mistake, absence of 46–7
Offer and acceptance . . 25 *et seq.*
ESTATE—PARTNERSHIP . . . 164
ESTOPPEL—
Agency by 75
Bankruptcy as 69
Deed, by 12
Definition 69
Discharge of contract, on . . 59, 69

PAGE

ESTOPPEL (*continued*)—
In pais 113
Judgment, by 69
EX CONTRACTU 4, 83
EX DELICTO 4, 48, 83
EX NUDO PACTO NON ORITUR ACTIO 21
EX PARTE WARING, Rule in . 325
EXAMINATION OF GOODS . . 126
EXECUTED CONTRACT . . . 13
EXECUTION—
Against partners 164
EXECUTOR—
Answer damages out of his own estate 16
Partners acting as 159
EXECUTORY CONTRACT . . . 13
EXISTENCE—
Principal, of 82
Subject matter of contract . . . 47
EXTRAORDINARY MEETING . 279
EXTRAORDINARY RESOLUTION 281

F.

FACT—
Mistakes, of 47
FACTORS—
Agency 73, 85
Definition of 85
Law of 85
Lien of 85, 182
F.A.S. CONTRACTS 224
FAVOURED DEBTOR 229
FEASANCE 77
F.G.A. 205
FICTITIOUS PAYEE—
Bills of exchange 99
Cheques 99
Forged indorsements 99
FIDELITY GUARANTEE 225, 228, 231–2
FIRE INSURANCE—
Agent, by unauthorised 199
Assignment of policy of . . . 199
Average clause 199
Contribution clause 198
Definition of contract 198
Indemnity, contract of 198
Insurable interest 194, 198
Legislation 198
Settlement of losses 198
Stamp duties 207
Subrogation 194, 205
Uberrimæ fidei 195
See also Insurance, and Policy.
FIRM. *See Partnership.*
FIRM OFFER 30
FLOATING CHARGE . . 274–5, 287
FLOTSAM 191
F.O.B. CONTRACTS 224
F.O.R. CONTRACTS 224
FORECLOSURE 169
FOREIGN AMBASSADORS . . 7
FOREIGN BILLS OF EXCHANGE—
Definition of 100, 102
Differ from inland bills 102
Dishonour 103
Protesting 103, 113
Stamp duties on 103, 122

PAGE

FOREIGN CONTRACTS—
Construction of 56
FOREIGN LAW 55–7
FOREIGN SOVEREIGNS AND STATES—
Capacity to contract 37
FORFEITURE OF SHARES . . 270
FORGED TRANSFERS . . .239, 268
FORGERIES—
Bills of exchange 104
Cheques, of 118
Fictitious payee's name 99
FORM—
Bill of exchange 98, 334
Bill of lading 221
Bill of sale 175
Charter party 217
Cheque 334
Contract 15
Marine insurance policy 201
Promissory note 116, 334
Protest 361
FORMATION OF COMPANY 256, 259, 260
F.P.A. 205
FRAUD—
Definition 49
Directors 49, 263
Intention to deceive involved . 50
Promoters 263
Remedies 51
Suretyship, in 231
FRAUDULENT PREFERENCE 313–4
"FREE OF ALL THE EQUITIES" 92
FREIGHT—
Advance 223
Dead 223
Definition 223
Lien for 190, 222
Lump sum 224
Pro rata 224
FUNERAL EXPENSES—
Insurance, for 195, 197

G.

GAMBLING—
Policy 196, 200
Stock exchange 255
GAME, Sale of 45
GAMING AND WAGERING . .43–4
GARNISHEE ORDER . . . 6, 165
GENERAL AGENT 72
GENERAL AVERAGE . . .188, 222
GENERAL CROSSING 119
GENERAL LIEN 79, 182
GENERAL MEETING 279
GENERAL OFFER 26
GILT-EDGED SECURITIES . . 238
GOODS—
Definition of 124
Delivery of . . . . . 125 *et seq.*
Non-existent 129
Re-sale 142
Sale of. *See Sale of Goods.*
"Sale or return," on 128
Specific 127–8
Stolen 138–9

PAGE

GOODWILL—
Contract in restraint of trade is part of 42
Definition 162
Local 162
Personal 162
Purchase of 150, 161
GRANTEE OF BILL OF SALE—
Remedies of 177
GRATUITOUS AGENT 76
Liabilities of 76–7
Skill of 76–7
GUARANTEE COMPANY . . . 255
Indisputable claim to its registered name 284
Non-trading institutions . . . 283
Omission of limited in name . . 283
GUARANTEES—
Alteration in terms 231
Continuing 228–9
Contract of 225, 227
Definition 225
Distinguished from indemnities . 226
Fidelity 225, 228, 231–2
Firm, of 152, 229, 233
Non-execution 231
Partners, of 153, 233
Revocation of 229, 233
Writing necessary 20
See also Surety and Suretyship.

H.

HIGH COURT 2
Actions in 5, 6
Jurisdiction of 7
HIRE PURCHASE AGREEMENTS 144
HOLDER FOR VALUE . . . 92, 107
HOLDER IN DUE COURSE . . 107
HOLDING-OUT 155–6
HOTCHPOT 230
HOUSEHOLDER'S PROTEST . . 361
HUSBAND—
And wife 35, 73, 89, 90
Insurable interest of 195
Ship's 187
HYPOTHECATION (Shipping) . . 189

I.

IDENTITY OF—
Parties to a contract 46
Principal 82
Subject matter of contract . . . 47
IGNORANTIA JURIS NEMINEM EXCUSAT 47
ILLEGAL CONTRACTS . . . 39–40
Partnerships 147
IMMORAL CONTRACTS . . . 14
IMPLIED AUTHORITY—
Of Agent 74–5
Of Partners 153
Of Servant 74
Of Wife 74, 89

PAGE

IMPLIED CONDITIONS . . 135–7
IMPLIED WARRANTY 134, 135, 200, 219
IMPOSSIBILITY—
Absolute 45, 69
Actual 46
Discharge of contract, by . 69 *et seq.*
Legal 45, 69
INCHOATE INSTRUMENTS . . 110
INDEMNITY, CONTRACTS OF—
Distinguished from Guarantees . 226
Fire insurance 193, 198
Marine Insurance 193, 199
INDENTURE 11
INDORSEMENT—
Allonge 108
Blank 108
Circuity of action 109
Conditional 108
Conditions as to 107–9
Forgery of 93, 99
Restrictive 108
Sans recours 109
Special 108
INDORSER—
Liability of 107, 114
INFANTS—
Actions by 35
Bankruptcy of 291–2
Betting and Loans (Infants) Act 32
Bills of exchange 103
Binding contracts 32–5
Cannot contract mortgage . . . 171
Contracts by . . . . 30 *et seq.*
Infants' Relief Act 31
Members of limited companies . . 264
Necessaries 33
Negotiable instruments . . . 34, 103
Partners 151
Ratification of contracts . . . 31
Recovery of money paid by . . 34
Responsibility of parent or guardian 34
Void contracts 31
Voidable contracts 32
INFRINGEMENT—
Copyrights . . . . . 248 *et seq.*
Patents 244
Trade marks 247
INJUNCTION 67
INJURIA SINE DAMNO . . . 3
INLAND BILL 100, 115
v. Foreign bill 102
INNKEEPERS—
Lien of 181–2
INNOCENT MISTAKE 48
IN PAIS 13
INSURANCE BROKERS—
Agency of 73, 86, 201
Definition of 86
Liability of 201
Lien of 182
INSURABLE INTEREST—
Definition 194
Fire 198
Life 196
Marine 199, 200
Mercantile agent's (factor) . . . 85
Mortgagee's 200
Pawnbroker's 180
Persons who have 194–5

PAGE

INSURANCE—
Classes of 193, 207
Definition 193
Fine. *See separate heading.*
Funeral expenses, for . . .195, 197
Insurable interest 194, 198
Life. *See separate heading.*
Marine. *See separate heading.*
Nature of insurance contracts . . 193
Policy 193, 195, 197
Premium 193
Stamp duties 207
Subrogation 194, 205
Underwriter 193
See also Assurance, Policy, and Accident, Fire, Life and Marine Insurance.
INTENTION OF PARTIES—
Mistake as to 46
INTEREST—
Bankrupt's debts 318, 320
Bottomry bonds 190
Judgment debts 64
Overdue accounts 149
Overdue bills 115
Pawnbroker's 173
Payment of 63, 64
Respondentia bonds 190
INTEREST OR NO INTEREST . 199
INTOXICATING LIQUORS, Sale of 45
INVESTMENTS 239, 240
IRREDEEMABLE DEBENTURES 274
IRREVOCABLE AGENCY . . 84, 85

J.

JETSAM 191
JETTISON 188
JOBBERS. *See Stock Jobber.*
JOINT AND SEVERAL PROMISSORY NOTES 116
JOINT ESTATE 164
JOINT PROMISSORY NOTES . . 116
JOINT STOCK COMPANIES. *See Limited Liability Companies.*
JUDGMENT—
Against partnership 164
Estoppel by 69
Method of enforcing 6
JUDICATURE ACTS . . . 2, 57, 93
JUDICATURE, SUPREME COURT OF—
Divisions of 2
JURISDICTION—
County courts 7
High court 7
Lands overseas, as to 57
Parliamentary 2
JUSTICE, CONTRACTS TO IMPEDE ARE ILLEGAL . . . 40

K.

KING'S BENCH DIVISION . 2, 4–5
KING'S COURTS 1

PAGE

L.

LACHES 232
LAND, SALE OF—
Contracts are *uberrimæ fidei* . . 52
Statute of Frauds, provisions of . 16
Statute of Limitations, provisions of 68
LANDLORD'S POWER OF DISTRESS 320
LAPSE OF TIME 67–8
Discharge of bill of exchange . . 114
Discharge of contract 67–8
Revival of right 68
Statutes of Limitation 68
LATENT AMBIGUITY . . . 54, 55
LAW—
Agency . . . . . 72 *et seq.*
Common . . . . . 1 *et seq.*
Companies . . . . . 255 *et seq.*
Contracts . . . . . 9 *et seq.*
Copyright . . . . . 248 *et seq.*
Foreign . . . . . 55 *et seq.*
Limited liability companies . 255 *et seq.*
Mercantile 8
Merchant 1
Mistake of 47
Negotiable instruments 92
Partnership . . . . . 146 *et seq.*
Patents . . . . . 241 *et seq.*
Sale of goods . . . . . 124 *et seq.*
Shipping . . . . . 184 *et seq.*
Statute 2
Trade marks . . . . . 245 *et seq.*
LAY DAYS 218
LEASES—
Agent to grant or surrender . . 74
Disclaiming 315
LEEMAN'S ACT 44, 80, 234
LEGAL IMPOSSIBILITY . . 45, 69
LEGAL MAXIMS. *See Definitions of Legal Maxims.*
LEGAL TENDER 60
Bank notes as 122
Examples of 60–1
LEGALITY OF OBJECT—
Aliens 37
Bills dated on Sunday 100
Bills given for gaming debts . . 110
Business Names Act 45
Champerty 24, 40, 41
Cheques given for gaming losses . 44
Civil wrong 40
Immoral contracts 40
Justice, to impede 40
Leeman's Act 44, 80, 234
Maintenance and champerty . 24, 40
Marriage brokage 40
Moneylenders' Act 45
Post-dated bills 100
„ cheques 121
Public policy 41
Restraint of trade 41
Sale of bread and coal 45
Statutory provisions 43
Stock exchange contracts . . . 234
Sunday Observance Act 43
Trading with enemy 40
Truck Acts 43
LETTERS PATENT—
Crown grant 37, 241

PAGE

LETTERS PATENT (*continued*)—
Incorporation of companies . . 255
Patents Acts, under 241
LEX LOCI CONTRACTUS . . 56
LEX LOCI FORI 56
LEX MERCATORIA 1
LIABILITY—
Acceptor of bill of exchange . 104–5
Agent to principal 76
„ „ third parties . . 80 *et seq.*
Brokers 86
Common carriers . . . 209 *et seq.*
Company promoters 261
Directors 49, 277–8
Gratuitous agent 76
Indorser 107, 114
Master or owner of ship . . . 221
Owner of ship . . 212, 216–9, 221
Partners . . . . . 154 *et seq.*
Pawnbrokers 180
Principal to agent 79–80
„ „ third parties . 80 *et seq.*
Railway and Canal Companies 210 *et seq.*
Surety 227
Third parties, to . . . . 80 *et seq.*
Torts, for . . . . . 154 *et seq.*
Underwriters 204–5
"LICENCES OF RIGHT" . . . 244
LIEN—
Agent's 79
Arbitration 333
Auctioneer's 87
Banker's 88, 182
Company's, on shares 270
Definition 180
Discharge of 181
Equitable 183
Factor's 85, 182
Freight, for 190, 222
General 79, 182
Inn-keepers' 181–2
Insurance brokers' 182
Maritime 182
Particular 79, 182
Partners' 160
Possessory 181–2
Right of sale 182
Seamen's 192
Shares, on 270
Shipowner's 222–3
Solicitor's 182
Stockbroker's 182
Unpaid seller's 140–1
LIFE ASSURANCE—
Assignee need not have insurable interest 195
Assignment of policy . . .195, 197
Company's deposit with Paymaster-General 195
Definition 195
Funeral expenses policy 195
Husband's interest 195
Insurable interest 194
Law relating to 196–7
Married women 195
Proposal form 197
Stamp duties 207
Uberrimæ fidei 195
Wife's interest 195
See also Assurance and Policy.
LIGAN or LAGAN 191

PAGE

LIMITATION OF LIABILITY OF—
Common carriers 212–3, 216
Limited company 257
LIMITATIONS, STATUTES OF.
See Statutes of Limitations.
LIMITED LIABILITY COMPANY—
Accounts 281–2
Adoption of contracts 260
Allotment of shares 264
Annual return 266
Annual summary 266, 283
Arbitrations 327
Arrangement with creditors . . 289
Articles of Association 258
Association clause 258
Auditors 281–2
Bankruptcy of 292
Bonus shares 273
Brokerage 263
Calls 269
Capital. *See separate heading.*
Certificate of incorporation . . . 259
Commencement of business 259, 260, 283
Common seal 259
Contracts of 50, 260
Debentures . . . . . 273 *et seq.*
Definition 255
Directors . . . . . 276 *et seq.*
Dissolution 255, 284, 289
Dividends 273
Floating charge 275
Forged transfers 239, 268
Foreign interest 289, 290
Forfeiture of shares 270
Formation 256, 259, 260
Liability limited by shares . . . 255
Lien on shares 270
Limitation of liability 257
Limited partner, as 255
Management . . . . . 276 *et seq.*
Meetings. *See separate heading.*
Members. *See separate heading.*
Memorandum of association. *See separate heading.*
Minimum members 255
Minimum subscription 259
Minutes 280
Misrepresentations 262–3
Name 256
Objects 256–7
Preliminary contracts 260
Private 282–3
Promoter. *See separate heading.*
Promotion and prospectus . . . 260
Prospectus. *See separate heading.*
Registered office 256
Registration 259
Remedy for misrepresentation . . 262
Resolutions 281
Shares. *See separate heading.*
Share warrants 269
Statement in lieu of prospectus 260, 262
Statutory meeting 278
Stock 272
Table A 259
Underwriting 263–4
Winding-up. *See separate headings.*
See also Directors' Meetings, Members of Company and Shares.

PAGE

LIMITED PARTNERSHIP—
Advantages over partnership . . 166
Advantages over limited company . 166
Definition 165
Registration 166
Winding-up 166
LIQUIDATED DAMAGES . . 5, 66
LIQUIDATOR—
Accounts 286
Appointment of . . . 284, 286, 288
Books of 286
Duties of 286
Final accounts 289
LOCUS PENITENTIÆ 27
LOG BOOK—
Official 187
Ship's 187
LOSS (MARINE INSURANCE) . . 204
Actual total 204
Constructive total 204
Partial 204–5
LOST BILL 115
"LOST OR NOT LOST" 200, 203, 206
LUGGAGE 215–6
LUMP SUM FREIGHT 224
LUNATIC—
Bankruptcy of 292
Disability to contract 36
Partner becoming 151

M.

MAIL ORDER—
Sales by post 145
MAINTENANCE—
Illegality of 24, 40
MAKER OF PROMISSORY NOTE 116
MANAGEMENT OF COMPANY—
Accounts 281–2
Auditors 281–2
Directors . . . . . 276 *et seq.*
Meetings . . . . . 278 *et seq.*
Resolutions 281
Statutory books 282
MANAGING OWNERS—
Agency of 91, 187
MANIFEST 187
MARINE INSURANCE—
Abandonment 205
Actual total loss 204
Assignment 206
Average 205
Constructive total loss 204
Deviation 203, 220
Double insurance 206
Effected by agent 199
Form of policy 201
Implied warranties 200
Insurable interest 193, 199
Lloyd's policy 201
Losses 204–5
Lost or not lost 200, 203
Mixed policies 201
Notice of abandonment 205
Partial loss 204–5
Policies . . . . . 199, 201 *et seq.*
Re-insurance 206
Return of premium 206
Stamp duties 207

PAGE

MARINE INSURANCE (*continued*)—
Subrogation 194, 205
Suing and labouring clause . . . 204
Time policies 201
Total loss 204
Underwriter. *See separate heading.*
Unvalued policies 201
Valued policies 201
Voyage policies 201
Warranties 200–1
York-Antwerp Rules 205
See also Insurance, Loss and Policy.
MARITIME LIEN 182
MASTER OF SHIP. *See Ship's Master.*
MATE'S RECEIPT 220
MARKET—
Stock exchange 238
MARKET OVERT . . 87, 137 *et seq.*
MARRIAGE—
Agreements in consideration of . . 20
Brokage contracts illegal . . . 40
Statute of Frauds and 16
MARRIED WOMEN—
Agents, as 35, 89, 90
Bankruptcy of 35, 292
Capacity to contract 35
Insurance 195
Necessaries of 35–6
Restraint on anticipation . . . 35
Separate estate 35
MATURITY 100
MEETINGS OF COMPANY—
Annual 279
Extraordinary 279
General 279
Minutes of 280
Ordinary 279
Position regarding 280
Resolutions 281
Statutory 278
Scrutineers at 280
Winding-up 280, 289
MEETINGS OF CREDITORS—
Adjournment of 302
Advertisement of 300
Chairman of 301
First meeting 300
Proxies 301
Voting at 300
Winding-up of companies . . 286–9
MEMBERS OF COMPANY—
A and B lists 265, 286
Aliens 290
Annual return 266
Infants as 264
Liability of 264–5
Married women as 264
Register of 265–6
MEMBERS OF STOCK EXCHANGE—
Classes 234
Defaulting 237
See also Stock Exchange.
MEMORANDUM IN WRITING—
Contents of 18
Guarantees 17, 20
How effected 17
Names of parties 18–9
Oral evidence of 18
Sale of Goods Act 131, 133
Signatures 19

PAGE

MEMORANDUM IN WRITING (*continued*)—
Statute of Frauds 17–20
Subsequent variation of agreement . 19
When it may be made 17
MEMORANDUM OF ASSOCIATION—
Association clause 258
Attestation 258
Capital clause 257
Division of capital 271
Extension of powers 38
Limitation of liability 257
Name of company 256
Objects clause 256
Registered office 256
MERCANTILE AGENT 85
MERCANTILE LAW 8, 96
MERCHANT, LAW 1, 96
MERCHANDISE MARKS . . . 247
MERCHANT SHIPPING. *See Ships and Shipping.*
MERGER 59, 68, 232
MINIMUM—
Members in Company 255
Subscription 256
MINUTES OF MEETINGS . . . 280
MISFEASANCE 77
MISREPRESENTATION—
Agent, of 79
Company, of 262
Contracts, in 48–9
Damages, for 48
Definition 48–9
Directors, by 263
Fraudulent 48–9
Innocent mistake, not same as . . 48
Promoters, by 263
Prospectus of company . . . 261–2
Remedies for 48
Sale of goods, in 134
Suretyship, in. 231
MISTAKE—
As to identity of parties . . . 46
As to intention of parties . . . 46
As to subject-matter 47
Different kinds of 46
Discharge of contract, when . . 47
Fact of 47
Innocent 48
Ignorantia juris neminem excusat . 47
Nature of contract, as to . . . 47
Rescission. 48
MIXED POLICY 201
MONEY—
Paid under illegal contract . . . 45
„ „ mistake of fact . . . 47
„ „ „ of law . . . 47
MONEYLENDERS 45, 64
Act 45
MORTGAGE—
Appointment of receiver . . . 170
Assignment, by 167
Clog on redemption 169
Contributory 171
Debenture 171
Definition of 168
Equitable 168, 171–2
Equity of redemption 169
Infants cannot contract . . . 171
Legal . . . . . 168 *et seq.*

PAGE

MORTGAGE (*continued*)—
Personal property, of 172
Sale of mortgaged property. 169–170
Second 171
Ship, of 186
Stamp duties on 168
Tacking of securities 171
Taking possession 170
Third 171
MORTGAGEE—
Appointing receiver 170
Definition 168
Foreclosure, by 169
Insurable interest of 200
Remedies of 169
Sale by 169
Taking possession 170
MORTGAGOR—
Default of 169
Definition of 168
Remedies of 170
MUSTER ROLL 187
"MUTUALITY OF ASSENT" . . 10

N.

NAME OF COMPANY 256
NECESSARIES—
Drunken persons 36
Infants 33
Married women 35, 90
Persons of unsound mind . . . 36
NECESSITY, AGENCY OF . . 75
NEGLIGENCE— .
Liability of agent 76–7
NEGOTIABILITY—
Compared with assignability . 58, 93
Compared with transferability . . 94
Definition of 92
Test for 93
NEGOTIABLE INSTRUMENTS—
Bills of lading 222
Definition 92
Examples of 96–7
Law relating to . . . . . 92 *et seq.*
True owner of 95
See also Bills of Exchange, Cheques and Promissory Notes.
NEGOTIATION—
Of bill . . . . . 107 *et seq.*
Of postal order 94
NEMO DAT QUOD NON HABET 93, 137
NON COMPOS MENTIS . . . 68
NON-DISCLOSURE OF PRINCIPAL 81
NON-FEASANCE 77
NOTICE OF ABANDONMENT . 205
NOTICE OF BANKRUPTCY 294, 295
NOTICE OF DISHONOUR . . 112
Form of 349
"NOTICE TO ONE PARTNER IS NOTICE TO ALL" 154
NOTING OF BILL OF EXCHANGE 112–3
"NOT NEGOTIABLE" . . 94, 119, 222
NOVATION 58, 155
NUDUM PACTUM 23

PAGE

O.

OBJECTS OF COMPANY . . 256–7
OBJET DE VERTU 67, 144
OBLIGATIONS UNDER A CONTRACT—
Assignment of 57
Law relating to . . . . 52 *et seq.*
Third party, of 53
OBLIGOR 183
OFFER TO CONTRACT—
Communication of 26
Conditional 26
Essential 25
Firm 30
General 26
Invitations to 30
Necessary to validity of contract . 10
Revocation of 27
Rules as to 25
Suretyship and guarantee . . . 227
Use of post 28–9
See also Acceptance.
OFFICIAL RECEIVER—
Bankruptcy 299
Winding-up of companies . . . 285
OMNIS RATIHABITIO RETROTRAHITUR ET MANDATO PRIORI ÆQUIPARATUR . 75
OPTIONS 239
ORAL EVIDENCE ADMITTED . 18
ORDINARY—
Meetings 279
Resolution 281, 288
Shares 272
OVERDUE ACCOUNTS—
Interest on 145
OVERDUE BILLS AND CHEQUES—
Interest on 113
Negotiation of 109, 117
OWNER OF SHIP—
Duties of 190, 222
Liability of . . . 212, 216–9, 221
Lien of 190, 222–3
Limitation of liability 212
Managing 187
Registration by 184–5
OWNERSHIP AND MANAGEMENT OF SHIP. *See Ship.*
OWNER'S RISK 210
OWNERSHIP—
Negotiable instrument, of . . . 95
Of Ship . . . . . 185 *et seq.*
Passing of 127
See also Transmission of Ownership.

P.

PAID AGENT—
Accounts of 76–7
Bribery of 77
Skill and service of 76
PARI PASSU 287, 320
PARLIAMENTARY JURISDICTION 2
PAROL CONTRACT. *See Contract.*
PARTIAL ACCEPTANCE . . . 105
PARTIAL BREACH 65

PAGE

PARTIAL LOSSES (Marine Insurance) 204–5
PARTICIPATING PREFERENCE SHARES 272
PARTICULAR AVERAGE . . 188–9
PARTICULAR LIEN 79, 182
PARTICULAR PURPOSE—
Sale of goods for 136
PARTIES TO BILL OF EXCHANGE 97–8
Liability of 114
PARTNERS—
Acting as executors 159
Active 147
Agency of 73, 89, 152
Aliens as 150
Authority of . . . . 152 *et seq.*, 163
Bankruptcy of . . 151, 164, 292, 324
Capacity to contract 150
Capacity to deal with bills . . . 104
Continuing authority of . . . 163
Deceased 155, 159
Dormant 148, 154
Equitable lien of 183
Execution against 164
General 147, 165
Guarantee by 153, 233
Holding out as 155
Incoming 155, 161
Infants as 151
Kinds of 147
Liability for torts 156
Liability of . . . . . 154 *et seq.*
Lien of 160
Limited 148, 165
Lunacy of 151, 166
Notices to 154
Payment of premium 161
Powers of 153
Quasi 148
Remuneration of 151, 159
Retirement of . . 151–2, 155, 157
Rights of . . . . . 158 *et seq.*
Rights on dissolution . . 160 *et seq.*
Sleeping 148
PARTNERSHIP—
Admission of new partners . . . 151
Appointment of receiver . . . 159
Articles 147, 152, 158
Assignment of interest 159
"At will" 152
Change of 233
Constitution of 149
Definition of 146
Disputes, settlement of 157
Dissolution by court 151
Employment of trust money . . 156
Estate, administration of . 164, 324
Formation of 147
Goodwill 150, 161
Holding out in 155
Illegal 147
Judgment against 164
Limited. *See separate heading.*
Maximum membership 255
Registration of Business Names . 148
Rights of third parties 153
Secret profits 156
Termination 151
Trading 153

PAGE
PARTNERSHIP (*continued*)—
Uberrimæ fidei 157
Winding-up 163, 166
PART PAYMENT. 132
PART PERFORMANCE . . . 19, 131
PASSENGERS—
Carriage of 213
Luggage 215
PAST CONSIDERATION—
Bill of Exchange, for . . . 24, 109
Contract, in 24
PATENT AGENT 73, 91, 242
PATENT AMBIGUITY 54
PATENTEE, Rights of 244
PATENTS—
Assignment 244
Definition 241
Extension 244
Fees 244
Infringement 244
Licences of right 244
Method of obtaining 242
Opposition to 243
Period of 243
Register of 243
Revocation of 243
Rights of Crown 244
Specification of 242
Transmission 244
Valid 241
PAWN—
Definition 177
Pawnbrokers Act, under . . . 179
Security, as 167
See also Pledge.
PAWNBROKERS 179
Insurable interest 180
Interest 179
Liabilities of 180
Pawn ticket 179
Rights of 179
Warranty of title by . . . 135, 180
PAY DAY 236, 238
PAYEE, ACCOUNT 121
Fictitious 99
PAYMENT—
Appropriation of . . . . 62 *et seq.*
Discharge of bill of exchange by . 114
Discharge of contract by . . . 60
How made 61
Interest, of 63
Legal tender 60
On account 23
Part 132
Presentment of bill of exchange for 111
Receipts 62
Time of, of bill of exchange . . 100
To whom 62
PENALTY 66
PER PROCURATIONEM . . 72, 104
PERFORMANCE—
Discharge of contracts by . 58 *et seq.*
Discharge of surety by 230
Impossibility of 69
Part 19, 131
Specific 67, 144
Termination of agency, by . . . 84
PETITION IN BANKRUPTCY—
Conditions 296
Debtor, by 296
Secured creditor, by 296

PAGE
PETITION IN BANKRUPTCY (*continued*)—
Who may petition 295
PHYSICIANS, Capacity to contract . 39
PLAINT 7
PLEADINGS—
In King's Bench Division . . . 5
PLEDGE—
Definition 177
Effect of 177
Liability of pledgee 178
Possession of articles 178
Provisions of Factors Act . 178, 180
Security, as 167
Use of articles pledged 178
See also Pawn, Pawnbrokers.
POLICY (ASSURANCE OR INSURANCE)—
Assignee's Interest 195
Assignment of Fire 199
„ „ Life 197
„ „ Marine 206
Assurance 193, 195, 197
Average clause 198
Contribution clause 198
Endowment 196
Fire. *See Fire Insurance.*
Gambling 196, 200
Lloyd's S.G. . . . . 201 *et seq.*
Marine. *See Marine Insurance.*
Mixed 201
P.P.I. 200
Stamping 207
Time 201
Unvalued 201
Valued 201
Voyage 201
Wager 193
Whole Life 196
"With profits" 196
POLICY PROOF OF INTEREST . 200
POLICY, PUBLIC 41, 197
POLL 280
POSSESSORY LIEN 181–2
POST—
Sales by 145
Use of . . . . . 28 *et seq.*
POSTAL ORDERS—
Negotiation of 94
POST-DATING OF CHEQUES . . 121
POWER OF ATTORNEY . . . 74
PREFERENCE, FRAUDULENT 313–4
PREFERENCE SHARES . . 271–2
PREFERENTIAL CLAIMS IN BANKRUPTCY 320
Creditors 319, 320
Payments 287
PRE-PREFERENTIAL DEBTS . 287
PRELIMINARY CONTRACTS . . 260
PREMIUM—
Definition 193
Partnership 161
Return of 206
PRESENTMENT OF BILL OF EXCHANGE—
Acceptance, for 106
Payment, for 111
PRICE—
Actions, for 143
Sale of goods 130
"PRIMAGE AND AVERAGE" . 221

PAGE

PRINCIPAL—
Agent's secret profits and bribes . 77
Disclosure of 81
Duties to agent 79–80
Existence of 82
Identity of 82
Liability for acts of agent . . . 79
Non-existent 82
Rights of agent 79
Rights of principal . . . 76 *et seq.*
Rights of third parties . . 80 *et seq.*
Termination of agency 83
Uncertain 82
Undisclosed 81–2
PRINCIPAL, AGENT AND THIRD PARTIES—
Del credere agent 81
Foreign principal 81
Non-existent principal 82
Notice to terminate agency . . . 83
Right of set-off 82
Rights and liabilities . . 80 *et seq.*
Termination of agency 83
PRIVATE COMPANIES—
Advantage of 283
Definition 282
Restrictions 282
Returns 283
PRIVITY OF CONTRACT . . . 53
PROCEDURE—
Bankruptcy, in 293
County Court 7
High Court 5
PROFITS, SECRET 156
PROMISE 12
Gratuitous 15
PROMISSEE—
Consideration must proceed from . 23
PROMISSORY NOTES . . 115 *et seq.*
Banknotes. *See separate heading.*
Definition 115
Foreign 115
Form 116, 334
Inland 115
Joint 116
Joint and several 116
Maker of 116
Overdue 117
Parties to 115
Payable by instalments 116
Specimen of 334
Stamping 123
Statutory provisions 116
PROMOTER—
Definition of 260
Fraud of 263
Liability for statements in prospectus 261
Misrepresentations, by 263
Remedy against 263
PROMOTION OF COMPANY 260 *et seq.*
PROOF OF DEBTS . . . 317, 324
PROPERTY—
Assignment of debtor's 294
Disclaimable 315–6
Distribution of bankrupt's . . . 319
Divisible 309
Enquiry as to 312
Goods, in . . . . . 127 *et seq.*
Movable 7
Not divisible 311

PAGE

PROPERTY (*continued*)—
Passing of . . . . . 127 *et seq.*
Personal, mortgage of 172
Realisation of bankrupt's . . . 309
Recoverable 312
Reputed ownership 310
Rights in 167
PROPOSAL FORM 197
PROSPECTUS—
Agent for signing 74
Misrepresentations in 262
Requirements of 261
Rules relating to . . . . 260 *et seq.*
Statement in lieu of . . . 260, 262
"PROTECTED TRANSACTIONS" 311
PROTEST—BILL OF EXCHANGE 103, 113
Form of 361
Form of householder's 361
PROXY—
At company meetings 280
At creditors' meetings 301
PUBLIC EXAMINATION . . 302–3
PUBLIC POLICY—
Contract opposed to . . 41 *et seq.*, 197
"PUT" (on Stock Exchange) . . 239
"PUT AND CALL" (on Stock Exchange) 239

Q.

QUALIFICATION OF DIRECTORS 277
QUALIFIED ACCEPTANCE of bill of exchange 105
QUALITY OR FITNESS OF GOODS—
Implied conditions as to . . . 135
QUANTITY OF GOODS DELIVERED 126
QUANTUM MERUIT . . . 65–6
QUASI-CONTRACT. *See Contract.*
QUI FACIT PER ALIUM FACIT PER SE 54, 72
QUINQUENNIAL VALUATION . 196
QUOD AB INITIO NON VALET IN TRACTU TEMPORIS NON CONVALESCIT 45

R.

RAILWAY AND CANAL COMPANIES—
Carriage of passengers . . . 213–4
Common carriers 208
Exemption from liability . . 211–2
Liability of . . . . . 211 *et seq.*
Passengers' luggage 215–6
RATIFICATION—
Acts of agent 75
Contract by infant 31
Fire insurance effected by agent . 199
RECEIPT—
Acceptance and 132
Money paid, for 62
RECEIVER—
Appointment of, by mortgagee . 170
Appointment of, in partnership 159–60
Official 286, 299
RECEIVING ORDER. *See Bankruptcy.*
Advertisement of 298

PAGE

RECOGNIZANCE 11, 183
RECORD—
Contracts, of 11
RE-EXCHANGE 113
REFEREE IN CASE OF NEED . 107
"REFERENCE BACK" . . . 333
REGISTER BOOK 185
REGISTER OF MEMBERS . . 265–6
REGISTRATION—
Bills of sale 174–5
British ship 184
Business names . . 45, 148, 149, 267
Company 259
Copyright 248
Debentures, mortgages and charges 275
Directors 266–7
Limited partnerships . . . 166
Patents 243–4
Trade marks 245–6
REGISTRY, CERTIFICATE OF (Shipping) 185, 187
RE-INSURANCE 206
"RELATION BACK" . . 299–300
RELEASE—
Discharge of contract, as . . . 59
Trustee, of 306
REMEDIES FOR BREACH OF CONTRACT—
Damages. *See separate heading.*
Discharge of contract 64
Injunction 67
Quantum meruit 65
Specific performance 65
REMEDIES of Mortgagee . . . 169
Of Mortgagor 170
REMUNERATION—
Agent's 79
Partner's 159
REPRESENTATION—
Concerning credit 233
Contracts, in . . . . . 48 *et seq.*
Fraudulent 48, 233
Intentional 50
Marine insurance, in 201
See also Misrepresentation.
"REPUTED OWNERSHIP" . 310–11
RE-SALE BY SELLER . . 142, 181
RESCISSION OF CONTRACTS. *See Contracts.*
RES PERIT DOMINO 127
RESOLUTIONS OF COMPANY—
Extraordinary 281, 288
Ordinary 281, 288
Special 281, 288
Winding-up 288
RESPONDENTIA 189–90
RESTRAINT OF TRADE . 41 *et seq.*
RESTRAINT ON ANTICIPATION 35
RESTRICTIVE INDORSEMENT . 108
RETIREMENT OF PARTNERS—
Liabilities after 154, 157
Methods of 151
What constitutes 152
RETURN OF PREMIUM . . . 206
REVIVAL OF RIGHT 68
REVOCATION OF—
Agency 83
Offer 27
RIGHTS—
Agent's . . . . . 79 *et seq.*
Assignment, of 57

PAGE

RIGHTS (*continued*)—
Auditor's 281–2
Banker's 89
Buyer's . . . . . 133 *et seq.*
Contract, under a . . . 52 *et seq.*
Copyright, in 249
Goods, in 167
Partner's . . . . . 158 *et seq.*
Principal's . . . . . 76 *et seq.*
Property, in 167
Surety's 229
Third Party's . . . . 53, 80 *et seq.*
RULE IN *DEARLE V. HALL*. . 57
" " *CLAYTON'S CASE* . . 62
" " *EX PARTE WARING* . 325
RUNNING DAYS 218

S.

SALE BY MORTGAGEE . . . 169
SALES BY POST. *See Sale of Goods.*
SALE OF GOODS—
Agreements to sell . . 125, 129, 135
Auction 145
Breach of condition . . . 134, 137
" " contract . . . 133 *et seq.*
" " warranty . . . 133, 137
Capacity to contract . . . 9, 30
Carried by sea 224
Condition 133
Contract of sale 124
Damages 143–4
Delivery 125
Description, by 128, 135–6
Exemption from stamp duty . . 21
Formalities 130
Hire purchase 144
Implied conditions . . . 135 *et seq.*
" warranties 134–5
Interest on overdue accounts . . 145
Lien of unpaid seller 140
Market overt 137–8
Misrepresentation 134
Mortgagee, by 169–70
Non-existence of subject matter . 129
Particular purpose, for 136
Passing of property . . . 127 *et seq.*
Post, by 145
Price 130
Remedies of buyer 144
" " seller 143
Re-sale 142
Rights of buyer . . . . 133 *et seq.*
" " unpaid seller . . 140 *et seq.*
Sale . . . . . 125 *et seq.*
Sale or return, on 128
Sample, by 136–7
Seller's reservation 129
Specific goods 127–8
" performance 144
Stipulations 134
Stolen 138–9
Stoppage *in transitu*. *See separate heading.*
Transfer of title 137
Warranty 133–4
See also Conditions, Memorandum in Writing, Warranty.

PAGE
SALE OF GOODS ACT, SECTION 4. 16
Detailed examination of . . 131 *et seq.*
Part payment 131
Part performance . . . 19, 131–2
Memorandum in writing. *See separate heading.*
Value of goods 131
Variation of agreement 19
SALE OF LAND. *See separate heading.*
SALE OR RETURN. *See Sale of Goods.*
SALES BY POST. *See Sale of Goods.*
SALVAGE 190–1
SAMPLE, SALE BY. *See Sale of Goods.*
SANS RECOURS 109
SATISFACTION 23
See also Accord and Satisfaction.
SCHEME OF ARRANGEMENT. 303–4
SCRIP AND BONDS—
Negotiability of 96
SCRUTINEERS 280
SEALING AND DELIVERY OF DEED—
Essential to validity 11
SEAMEN—
Agreements with 187, 191
Discharge of 191
Duties of 192
Lien of 182, 192
Rights of 192
SECOND MORTGAGE 171
SECRET PROFITS—
Agents 77, 78
Partners 156–7
SECURED CREDITOR—
Course open to 317
Petition by 296
SECURITIES—
Bills of sale. *See separate heading.*
Bonds. *See separate heading.*
Classes of 167
Gilt-edged 238
Lien. *See separate heading.*
Loans on 236
Mortgages. *See separate heading.*
Pawn. *See separate heading.*
Personal 167
Pledge. *See separate heading.*
Property, on 167
Tacking 171
Transfers of 238
Trustee 238
SELLER—
Lien of unpaid 140
Remedies of 143
Reservation as to disposal of goods 129
Rights of unpaid . . . . 140 *et seq.*
SEPARATE ESTATE—
Married women 35
Partners 164
SERVANTS—
Agency of 73, 89
SET OF BILLS OF EXCHANGE 102
SET OF BILLS OF LADING . 222
SET-OFF 57, 60
SETTLEMENT—
Disputes in partnership 157
Losses in Fire Insurance . . . 198
Stock exchange 237
Voluntary 313–4

PAGE
SHARE CERTIFICATE—
Company's responsibility . . . 268
Definition of 267
Members entitled to 267
SHAREHOLDERS. *See Members of Company.*
SHARES—
Allotment 264
Application 264
Bonus 273
Brokerage 263, 266
Calls 269, 270
Cancellation 270
Certificate of 267
Classes of 271–2
Conversion into stock 272
Cumulative 272
Deferred 272
Definition 267
Dividends on 273
Forfeiture 270
Issued as fully paid 265
Lien on 270
Not issuable at a discount . . . 265
Ordinary 272
Participating Preference . . . 272
Preference 271–2
Qualification of directors . . . 277
Surrender of 270
Transfer of 238, 268–9
Transmission 269
Underwriters 263
Warrants 269
SHARES IN SHIPS—
Joint owners 186
Number of shares 185
SHARE WARRANTS—
Coupons for dividends 269
Delivery of 269
Negotiable instruments 269
Regulations for issue 269
SHIPBROKERS—
Agents, as 73
Definition 86
SHIPOWNERS—
Duties of 190
Liability of 212
Lien of 190, 222–3
Limitation of Liability 212
Managing 187
Power of sale 222
Registration of 184, 185
SHIPPING—
Barratry 191, 220
Bill of health 187
Bottomry 189
Certificate of registry 187
Collision 189
General average 188
Master . . . . . 187 *et seq.*
Ownership and management 185 *et seq.*
Particular average 188–9
Primage and average 221
Register book 185
Registration of 184–5
Respondentia 189
Salvage 190
Seamen 191
See also Bill of lading, Charter party, Master of ship, and Owner of ship.

PAGE

SHIP—
British 184
Co-ownership of 187
Husband of 187
Log book 187
Management of 185, 187
Master of 91, 187–8
Mortgage of 186
Owner of. *See separate heading.*
Ownership of . . . . . 185 *et seq.*
Papers of 187
Registration of 184
Seaworthiness of 187
Shares in 185
Transfer of ownership 186
See also Owner of Ship.
SHIP'S MASTER—
Agency of 73, 91
Duties of 187–8, 190, 222
Liability of 221–2
Lien on freight 190
Powers of 187
SIGNATURE—
Agent, of 19
Memorandum in writing, to. 17 *et seq.*
Specialty contracts, to 11
SIMPLE CONTRACTS 11
Compared with specialty contracts. 12
Definition 12
Examples of 15
SKILL—
Paid agent 76, 77
Voluntary agent 76–7
"SLIP," THE 201
SMALL BANKRUPTCIES . . . 323
SMALLER AMOUNT, PAYMENT OF, in satisfaction 23
SOLD NOTE 86, 236
SOLE CORPORATION 37
SOLICITOR—
Capacity to contract. 39
Lien of 182
SPECIAL AGENT 73
SPECIAL CASE 332
SPECIAL CROSSING. 119
SPECIAL DAMAGES. 67
SPECIAL INDORSEMENT . . . 108
SPECIAL RESOLUTION . 281, 288
SPECIALTY CONTRACTS—
Assignment of patent rights . . 244
Compared with simple contracts . 12
Definition 11
Examples of contracts which must be under seal 15
Limitation of action under . . . 68
Suretyship 226
SPECIFIC GOODS, SALE OF . . 127–8
SPECIFIC PERFORMANCE—
Contract 67
Infant's contracts 34
Sale of goods 144
SPECIFICATION (Patents)—
Complete 242
Provisional 242
SPECULATION ON STOCK EXCHANGE 235
STAMP DUTY—
Agreements, on 21
Arbitration awards 332
Arbitration submissions 328
Bill of exchange 103, 122–3

PAGE

STAMP DUTY (*continued*)—
Bill of lading 221
Charter party. 217
Cheques 123
Exemptions 21
Hire purchase agreements . . . 144
Insurance policies 207
Mortgages 168
Promissory notes 123
STANNARIES 146
STATEMENT IN LIEU OF PROSPECTUS 260, 262
STATEMENT OF AFFAIRS . . 302
STATUTE BARRED DEBTS—
Acknowledgments of 15
Appropriation of payments to . . 63
Payment of interest on 68
Revival of 68
STATUTE LAW 2
STATUTE OF FRAUDS—
Section 4 . . . . . 14, 16
Part performance of contract under 19
Suretyship and guarantee . . . 225
STATUTES OF LIMITATIONS—
Acknowledgment of debt . . 15, 68
Bankers and 89
Contracts relating to land . . . 68
Extension of time 68
Parol contracts 68
Promissory notes. 116
Specialty contracts 68
STATUTORY MEETING . . . 278
STIPULATION 134
STOCK 238, 272
STOCKBROKERS—
Agency of 236, 386
Definition 234
Lien of 182
STOCK EXCHANGE—
Account days. 237
Agency of stockbroker 236
Backwardation 236
Bulls and Bears 235–6, 238
Calls on 239
Contango 236
Continuation 236
Customs of 234
Defaulting members 237
Differences 235
Gambling 235
Investments 239
Management 234
Members 234, 237
Options 239
Provisions of Leeman's Act 44, 80, 234
Rules of 234
Settlement 237
Speculation 235
Stockbroker . . . 86, 182, 234, 236
Stock jobber 234, 237
The market 238
Ticket day 237
Transfers 238
Underwriting 239
STOLEN GOODS 138, 139
STOPPAGE *IN TRANSITU*—
Agent's right of 79, 86
Carrier's duties 214
Lien 180–1
Right of, in bankruptcy . . . 311
Shipowner's duty 223

PAGE

STOPPAGE *IN TRANSITU* (*contd.*)—
Unpaid seller's right of . . 140 *et seq.*
SUBJECT-MATTER OF CONTRACT—
Destruction of, discharges contract 70
Mistake as to 47
"SUBJECT TO THE EQUITIES" 57, 94
SUBMISSION TO ARBITRATION—
Compulsory 328
Consent, by 328
Exceptions to 330
Extent 330
Revocation 329
Stamp duties on 328
Under certain statutes 327
Voluntary 328
Writing, in 328
SUBROGATION—
Insurance, in 194, 205–6
Suretyship, in 229
SUING AND LABOURING CLAUSE 204
SUMMARY, ANNUAL . . .266, 283
SUNDAY OBSERVANCE ACTS—
Effect on contracts 43
SUPRA PROTEST, Acceptance . . 106
SURETY . . . . . 225 *et seq.*
Bankruptcy, of 228, 231
Co-surety 230
Death of 231
Discharge of . . . . . 230 *et seq.*
Liability of 227
Revocation by 233
Rights of 229
See also Guarantees and Suretyship.
SURETYSHIP—
Alteration of contract 231
Connivance of creditor 232
Consideration 226
Contract 16, 225
Definition 225
Discharge of principal 231
Discharge of surety . . . 230 *et seq.*
Fidelity 225, 228, 232
Fraud in 231
Guarantees 226
Indemnities 226
Laches 232
Liability of surety 227
Merger of security 232
Nature of 225
Non-disclosure 231
Non-execution 231
Parties required 227
Partnerships 233
Representation concerning credit . 233
Revocation of 233
Rights of surety 229
Subrogation in 229
Uberrimæ Fidei 229
See also Guarantees and Surety.
SURGEONS—
Capacity to contract 39
SURRENDER OF SHARES . . 270

T.

TABLE A 259
TACKING OF SECURITIES . . 171
TENDER, Legal 60, 122

PAGE

TERMINATION—
Agency, of . . . . . 83 *et seq.*
Appointment of trustee, of . . . 305
Authority to pay cheques, of . . 120
Contracts, of . . . . . 58 *et seq.*
Partnership, of 151
THIRD MORTGAGE 171
THIRD PARTIES—
And agency 80–83
Obligations under a contract . . 53
Rights against principal and agent 80
See also Principal and Agent.
TICKET DAY 237
TIME POLICIES 201
TITLE—
Transfer of 137
Trustee, of 300
Warranty of 134
TORT 3
Actions for 4
Liability of partners for 156
Unlawful conversion of goods . . 87
TOTAL BREACH OF CONTRACT . 64
TOTAL LOSS, ACTUAL AND CONSTRUCTIVE 204
TRADE DESCRIPTION . . .136, 247
TRADE MARKS
Assignment 246
Definition 245
Infringement of 247
Merchandise Marks Acts . . . 247
Old marks 245
Registration of 245
Transmission 248
Warranty 246
TRADES DISPUTES 53
TRANSACTIONS, PROTECTED . 311
TRANSFER—
Bill of lading 222–3
Declaration of (ship's) 186
Forged 239, 268
Of Title 137
Rights under contract, of . . 57–8
Securities, of 238
Shares, of 268
See also Assignment.
TRANSFERABILITY—
Bill of exchange 94
Bill of lading 222
v. Negotiability 94
TRANSMISSION OF OWNERSHIP—
British ships 186
Copyright 252
Patents 244
Shares 269
Trade marks 248
TRUCK ACTS—
Payment of workmen's wages . . 43
TRUE OWNER 95
TRUST MONEY, Employment of . 156
TRUSTEE—
Bankruptcy, in. *See separate heading.*
Creditors, for 293–4
Director as 276
Official receiver, as 305
TRUSTEE IN BANKRUPTCY—
Accounts of 309
Appointment 304
Books 309

PAGE
TRUSTEE IN BANKRUPTCY (*continued*) —
Disclaimer 71, 315
Duties of 306
Official receiver, as 305
Powers of 307
Release of 306
Termination of appointment . . 305
Title 300
TRUSTEE SECURITIES . . . 238

U.

UBERRIMÆ FIDEI—
Contracts 52
Definition of 52
Insurance 195, 197
Partners 157
Suretyship 229
ULTRA VIRES 37, 257
UMPIRE. *See Arbitrator.*
UNDISCHARGED BANKRUPT . 322
UNDISCLOSED PRINCIPAL . . 81
UNDERWRITER (MARINE INSURANCE)—
Definition 193
Insurance broker liable to . . 201
Liability of 204
Payment to 86
UNDERWRITER OF SHARES . 263
UNDUE INFLUENCE 52
UNENFORCEABLE CONTRACTS 14, 16
UNIVERSAL AGENT 73
UNLIMITED COMPANIES . . . 255
UNLIQUIDATED DAMAGES . . 67
UNPAID SELLER. *See Seller.*
UNSOUND MIND, PERSONS OF—
Capacity to contract 36
UNVALUED POLICY 201
USANCE 102
UT RES MAGIS VALEAT QUAM PEREAT 55

V.

VALUABLE CONSIDERATION . 21
VALUATION, QUINQUENNIAL . 196
VALUE—
Consideration, of 22
Holder for. *See Holder for Value.*
Sale of goods, as regards . . . 131
"VALUE RECEIVED" 109
VALUED POLICY 201
VESTING ORDERS 316
VETERINARY SURGEONS—
Capacity to contract 39
VOIDABLE CONTRACTS . . . 32
VOID CONTRACTS . . . 14, 31, 43
VOLUNTARY BAILEE . . . 77, 215
VOLUNTARY WINDING-UP. *See Winding-up.*

W.

WAGERING CONTRACTS . . . 43
WAGERING POLICIES . . . 193
WAGES OF SEAMEN 192
„ „ WORKMEN . . . 43
PAGE
WAIVER OPERATING AS DISCHARGE 114
WARRANTS—
Dock 223
Share 269
WARRANTY—
Breach of 133, 137
Charter party 219
Conditions and 134, 219
Definition 133
Marine insurance 200
Pawnbroker, of 135, 180
Sale of goods 133
Title 134
Trade marks 134, 246
"WEIGHT VALUE AND CONTENTS UNKNOWN" . . . 221
WHERE THE EQUITIES ARE EQUAL THE LAW SHALL PREVAIL 171
WIFE—
Agency of 35, 73, 89, 90
Insurable interest 194
WINDING-UP (Compulsory)—
Appointment of liquidator . . 286
Commencement of 285
Committee of inspection . . 286
Contributories 286
Grounds for 285
WINDING-UP (of Companies)—
A & B List of members . . . 286
Board of Trade and 286
Contributories 286
Creditors' rights 289
Dissolution of company . . 284, 289
Distribution of assets . . . 286
Final meeting 289
Liquidators 284, 286, 288
Methods of 284
Preferential payment . . . 287
Pre-preferential debts . . . 287
Provable debts 287
WINDING-UP (of Partnership)—
Assurance, for 163
Companies Act, under . . . 163
Limited partnership 166
Partnership Act, under . . . 163
WINDING-UP (Under Supervision)—
Discretion of court 289
Resolution for 289
WINDING-UP (Voluntary)—
Advertisement of 288
Appointment of liquidator . . 288
Causes and method 298
Commencement of 288
Effect of 288
Resolutions for 288
"With Profits" policy 196
WRIT—
Elegit 6
Fieri facias 6
Inquiry, of 5
Summons, of 5
WRITING—
Contracts which must be in . 15 *et seq.*

Y.

YORK-ANTWERP RULES . 188, 205

THE METROPOLITAN COLLEGE

The Metropolitan College is the Premier Postal Coaching Institution in the Kingdom undertaking preparation for the following examinations :—

LONDON UNIVERSITY.
- Matriculation
- Bachelor of Commerce Degree

SECRETARIAL.
- Chartered Institute of Secretaries
- Incorporated Secretaries Association

ACCOUNTANCY.
- Institute of Chartered Accountants
- Society of Incorporated Accountants and Auditors
- London Association of Accountants
- Institute of Cost and Works Accountants
- Corporation of Accountants
- Central Association of Accountants

BANKING.
- Institute of Bankers
- Institute of Bankers in Ireland

INSURANCE.
- Chartered Insurance Institute

GENERAL.
- Royal Society of Arts
- London Chamber of Commerce
- Faculty of Teachers in Commerce
- Pitman Joint Examining Board
- Institute of Book-keepers

Students who do not desire examination coaching may undertake one of the many Practical Training Courses conducted by the College.

Full particulars of the foregoing examinations and of the work and methods of the College are contained in the valuable copyright "Guide to Careers in Business" (132 pages) issued by the College, free and post paid, which may be obtained on application to the

Secretary,

METROPOLITAN COLLEGE,

ST. ALBANS.

A boon to all Accountancy and Secretarial Students.

The Students' Note-Book

An excellent book for use during revision. Over 7,000 copies already sold.

A complete collection, in one handy volume, of pithy, concise Examination Notes, setting out briefly all the important facts, principles, rules, etc., which a student is required to know, and remember, in each subject, in the recognized Accountancy, Secretarial and Commercial Examinations.

No student can now afford to be without this book, the need for which has been felt for years. It is not claimed that the Note-Book dispenses with the necessity for specialized coaching, but it is confidently asserted that it will enable the student to—

(*a*) Save scores of hours of arduous study;
(*b*) Avoid presenting himself for examination with work half done or health neglected; and
(*c*) Materially improve his prospects of gaining coveted "Honours."

This valuable work is the outcome of the joint labour of the Tutorial Staff of the Metropolitan College, and is offered for the benefit of all candidates, wherever training.

The Enlarged Second Edition comprises 580 pages, being 290 pages of Notes, etc., interleaved with *feint ruled* pages. Full index included.

Handsomely bound in heavy cloth boards, gold lettered, and forwarded by post in stout fibre case.

Specially designed for students for the following examinations:

C.A., S.A.A., L.A.A., C.I.S., I.S.A., C.R.A.

Also invaluable for students for the L.C. of C., R.S.A., N.U.T., etc., examinations.

The Students' Note-Book embraces the following subjects:

Book-keeping and Accounts.
Cost Accounts.
Mercantile Law.
Company Law.
Economics.
Banking and Exchange.
General Commercial Knowledge.
Abbreviations and Commercial Terms.
Auditing.
Partnership Law.
Executorship Law and Accounts.
Statistics.
Deeds of Arrangement.
Rights and Duties of Liquidators, etc.
Arbitrations and Awards.
Secretarial Practice and Business Management.
Procedure at Meetings.
Correspondence, Précis, Filing, Indexing, etc.
French.
Spanish.
Bankruptcy Law.

Price 10s. 6d. net.

Cash with order. By post, 1s. extra.

Obtainable only from THE METROPOLITAN COLLEGE, ST. ALBANS.

SCHOOL OF LAW LIBRARY
UNIVERSITY OF CALIFORNIA
LOS ANGELES

O/D

UC SOUTHERN REGIONAL LIBRARY FACILITY
A 000 669 901 1